



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

मंगलवार, 24 सितम्बर, 2019/02 आश्विन, 1941

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Dharamshala, the 26th March, 2019

No. Shram (A) 6-2/2014 (Awards).—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to

order the publication of awards of the following cases announced by the Presiding Officer, Labour Court Dharamshala on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sl. No.	Ref. No.	Petitioner	Respondent	Date of Award/order
1.	246/13	Pammi Devi	M/s Swiss Garnier	06-12-2018
2.	135/13	Vijay Kumar	Chairman Sahayta Security	07-12-2018
3.	120/13	Daleep Kumar	Chairman Sahayta Security	07-12-2018
4.	121/13	Om Prakash	Chairman Sahayta Security	07-12-2018
5.	122/13	Roshan Lal	Chairman Sahayta Security	07-12-2018
6.	119/13	Kuldeep Kumar	Chairman Sahayta Security	07-12-2018
7.	65/17	Hari Nath	E.E. HPPWD, Killar	11-12-2018
8.	347/15	Prem Chand	Principal, Secred Heart Sr. Sec. Sch.	11-12-2018
9.	632/16	Bhag Singh	E.E. HPPWD, Killar	12-12-2018
10.	401/16	Pan Dei	E.E. HPPWD, Killar	12-12-2018
11.	111/16	Amar Singh	E.E. I&PH, Dalhousie	12-12-2018
12.	520/15	Prem Singh	B.D.O. Killar	12-12-2018
13.	824/16	Karam Singh	E.E. HPPWD, Nurpur & others	15-12-2018
14.	864/16	Jagdish Chand	E.E. HPPWD, Nurpur & others	15-12-2018
15.	859/16	Sher Singh	E.E. HPPWD, Nurpur & others	15-12-2018
16.	809/16	Joginder Singh	E.E. HPPWD, Nurpur & others	15-12-2018
17.	883/16	Balwant Singh	E.E. HPPWD, Nurpur & others	15-12-2018
18.	813/16	Tilak Ran	E.E. HPPWD, Nurpur & others	15-12-2018
19.	819/16	Gani Deen	E.E. HPPWD, Nurpur & others	15-12-2018
20.	833/16	Raghubir Singh	E.E. HPPWD, Nurpur & others	15-12-2018
21.	892/16	Uttam Chand	E.E. HPPWD, Nurpur & others	15-12-2018
22.	898/16	Brahm Dutt	E.E. HPPWD, Nurpur & others	15-12-2018
23.	829/16	Prabhat Singh	E.E. HPPWD, Nurpur & others	15-12-2018
24.	821/16	Raghubir Singh	E.E. HPPWD, Nurpur & others	15-12-2018
25.	804/16	Balwant Singh	E.E. HPPWD, Nurpur & others	15-12-2018
26.	811/16	Chiragdeen	E.E. HPPWD, Nurpur & others	15-12-2018
27.	807/16	Rehmat Ali	E.E. HPPWD, Nurpur & others	15-12-2018
28.	831/16	Harbans Singh	E.E. HPPWD, Nurpur & others	15-12-2018
29.	817/16	Pritam Chand	E.E. HPPWD, Nurpur & others	15-12-2018
30.	805/16	Manoj Kumar	E.E. HPPWD, Nurpur & others	15-12-2018
31.	183/13	Sandeep	M.D. M/s Cozy Touch Polyfoams.	15-12-2018
32.	303/15	Man Singh	B.D.O. Killar	17-12-2018
33.	222/16	Bhagwan Chand	E.E. HPPWD, Killar	17-12-2018
34.	443/16	Roshan Lal	E.E. HPPWD, Killar	17-12-2018
35.	88/16	Kishan Kumar	E.E. HPPWD, Killar	17-12-2018
36.	597/15	Maheshi Devi	E.E. HPPWD, Killar	17-12-2018
37.	52/17	Haria Ram	E.E. HPPWD, Killar	17-12-2018
38.	351/16	Anita Kumari	E.E. HPPWD, Killar	17-12-2018
39.	241/16	Filmi Devi	E.E. HPPWD, Killar	17-12-2018

By order,

NISHA SINGH, IAS
Addl. Chief Secretary (Lab. & Emp.).

**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 246/2013
Date of Institution : 19-12-2013
Date of Decision : 06-12-2018

Smt. Pammi Devi w/o Shri Surender Kumar, c/o Sh. Tirth Ram, Near UCO Bank Mehatpur, Tehsil & District Una, H.P. . .*Petitioner.*

Versus

1. The Managing Director, M/s Swiss Garner Life Science, Plot No. 21—23, Industrial Area Mehatpur, Tehsil & District Una, H.P.

2. Sh. Sat Pal Sharma, Contractor c/o M/s Swiss Garner Life Science, Plot No. 21—23, Industrial Area, Mehatpur, Tehsil & District Una, H.P. . .*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Varun Sharma, Adv.
For the Respondent No. 1 : Sh. R.S. Rana, Adv.
For the Respondent No. 2 : Experte as before

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Smt. Pammi Devi w/o Sh. Surender Kumar c/o Sh. Tirth Ram Near UCO Bank Mehatpur, Tehsil & Distt. Una, H.P. by (i) Sh. Sat Pal Sharma, Contractor c/o M/s Swiss Garner Life Science, Plot No. 21—23, Industrial Area, Mehatpur, Tehsil & Distt. Una, H.P. and (ii) The Managing Director, M/s. Swiss Garner Life Science, Plot No. 21-23, Industrial Area Mehatpur, Tehsil & Distt. Una, H.P. (**Principal Employer**) during July 2010 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what benefits, including reinstatement, amount of back wages, salary, seniority, past service benefits and compensation the above worker is entitled to from the above employers?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition reveal that petitioner above-named had remained employed *w.e.f.* 15-7-2007 as unskilled worker in their packing department through contractor Shri Sat Pal Sharma respondent No. 2 engaged by M/s. Swiss Garner Life Science respondent No. 1. The grievance of the petitioner remains that petitioner continuously worked in the packing department till 2009 when she had been ordered to work of sweeping in the factory which she had done till 23rd October, 2010 when on 24th October, 2010 morning she was disallowed to work in the factory premises of respondent No. 2 for unknown reason. Thereafter, petitioner alleges to have issued notice to respondents which had been kept pending by Labour Inspector as well as Labour Commissioner Shimla for two

years without making reference to appropriate government and upon seeking information under RTI Act as to why her case has not been referred present case had been referred to this court by the appropriate government. Averments made in the claim petition further revealed that respondent No.1 had stated before Labour Inspector that she had left the job which was stated to be incorrect rather petitioner claims that contractor misbehaved with her. It is alleged that before terminating her service, she had not been served any notice, show cause notice or that any inquiry was initiated besides maintained that she had rendered more than 240 days service in each year necessitating issuance of one month's notice prior to termination or wages of one month's in lieu of notice period. It is alleged that compensation under Section 25-F (f) of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity) had neither been paid nor tendered till the date of filing of claim petition after the reference. Accordingly, petitioner claims that her termination being malafide was result of unfair labour practice moreover while terminating service of petitioner, junior workers to petitioner had been retained. Accordingly, petitioner prays for her re-instatement in service with full back wages.

4. Respondent No.1 contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, cause of action, *locus standi*, suppression of material facts and that petitioner was engaged by respondent No.2 on contract basis who was not a daily wager of respondent No.1. On merits claimed that petitioner had never been employed by respondent No.1 rather she had been engaged by respondent No. 2 M/s Jai Durga Service Manpower contractor who was licence holder to provide manpower. It is alleged that there existed outsource agreement between respondents *vide* agreement dated 1-7-2008 and due to that reason, petitioner could not claim herself to employee of respondent No.1 besides maintained that petitioner was working under the contractor control and supervision of respondent No. 2 and her wages, allowances, emoluments were being paid by respondent No. 2. It is claimed that respondent No.1 as per agreement with respondent No. 2 used to provide list of service required for particular location and fulfilled the requirement of respondent No.1. Thereafter, respondent No.1 used to pay respondent No. 2 for the service as per bill submitted to respondent No.1 besides asserted that petitioner as per record had worked with respondent No. 2 from 1-8-2008 to September, 2010 who was being paid wages from respondent No. 2. It has been emphatically denied that petitioner continued to work in packing department of respondent No. 1 till 2009 besides denied that petitioner was ever asked to work for sweeping in the factory premises rather she continuously worked till October, 2010 and was not denied to work on 24-10-2010. It has been denied that petitioner was thrown out from factory as alleged by her in claim petition. It is further denied that demand notice was issued to petitioner by respondent No.1 however on legal notice issued by Shri Rajesh Chaudhary, Adv. was served upon respondent No. 1 on 28-5-2013 which was duly replied on 30-5-2013 in which respondent No.1 maintained that petitioner was not employee of the respondent No.1. It is asserted that petitioner was an outsource employee of respondent No. 2 the contractor working with respondent subject to certain terms and conditions. It is further claimed that since petitioner was not employee of respondent No.1, there was no question of issuing notice of one month or pay compensation in lieu thereof under Section 25-F of Act.

5. Respondent No. 2 filed separate reply admitted that petitioner had joined with respondents from 1-7-2008 and left the job on 10-10-2010 without giving any information. It is claimed that petitioner in dispute was employee of principal employer respondent No.1 who had pushed her and thrown out of factory. Denied that petitioner had issued any demand notice to him. It is admitted that principal employer put such inquiry but respondent No. 2 was not informed. It has been further denied that petitioner had ever worked 240 days

during her service period. Denied that petitioner was entitled to claim any benefit from respondent No. 2.

6. The petitioner filed rejoinder to the reply filed by respondent No.1 as well as to reply filed by respondent No. 2 and reiterated her stand as maintained in the claim petition *qua* serving demand notice and that she had been illegally terminated. In rejoinder to reply to respondent No.1, it has been denied that no demand notice was served either on respondent No.1 rather both the respondents had appeared before Conciliation Officer, Una in dispute raised could not be resolved.

7. To prove her case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent No.1 has examined Shri J.P. Sharma, DGM, Human Resources M/s. Swiss Garner Life Science, Industrial Area Mehatpur, District Una as RW1 tendered/proved his affidavit Ex. RW1/A, RW2 Shri Vinod Kumar, Assistant Manager, M/s. Swiss Garner, tendered/proved his affidavit Ex. RW2/A. The respondents has also examined Smt. Megha Kumari, Civil Ahlmad, Civil Judge, Una as RW3, Shri Naveen Kumar, Labour Inspector, Una as RW4, Shi Ravi Kant Singh as RW5, Shri K.S. Subramanyam, DGM, Swiss Garner as RW6, Ex. RW3/A copy of plaint, Ex. RW4/A certified copy of record of Labour Inspector, Ex. RW5/A copy of declaration form, Ex. RW6/A copy of agreement, copy of agreement Ex. RW6/B, copies of proceedings of Labour Inspector Mark-R1, copy of register of adult workers Mark-R2, copy of attendance register Mark-R3, copy of salary register Mark-R4, copy of attendance statement Mark- R5, copy of agreement dated Mark- R6, copy of conciliation proceedings Mark-X, copy of conciliation proceeding dated 11-11-10 Mark- X1, copy of returns April, 2008 to April, 2010 Mark- Y, Y1, Y2 and Y3 respectively and closed the evidence. Respondent no. 2 however did not lead any evidence in support of his plea as maintained in his reply instead before any evidence could be led, respondent No.2 opted to not contest by making statement before this court on 4-5-2018 asserting that he does not want to contest claim of petitioner and thereafter respondent No. 2 was proceeded against exparte. Be it stated that in claim petition Managing Director Swiss Garner Life Science had been shown as respondent No.1 and contractor Sat Pal Sharma as respondent No. 2 in opening para of reference and these respondents were given same sequence in claim petition which has so been mentioned present award.

8. I have heard the Ld. Counsel for the parties and gone through records of the case carefully relevant for disposed of this case.

9. From the contentions raised, following issues were framed on 04-6-2016 for determination:—

- (1) Whether termination of services of the claimant/petitioner by the respondents during July, 2010 is/was illegal and unjustified as alleged? ..*OPP*.
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (3) Whether the claim petition is not maintainable in the present form? ..*OPRI*.
- (4) Whether petitioner has no locus standi to file the case as alleged? *OPRI*.
- (5) Whether the petitioner has no cause of action to file the present case as alleged? ..*OPRI*.

- (6) Whether the petitioner has suppressed and concealed the true and material facts from the Court as alleged? ..OPR1.
- (7) Whether the petitioner was engaged by the respondent No. 2 on contract basis and not on daily wages worker of respondent No.1 as alleged. If so, its effect? ..OPR1.
- (8) Whether there exist no dispute between petitioner and respondent No.2 as respondent no. 2 had engaged on contract basis as alleged? ..OPR2.
- (9) Whether the principal employer had only right to set inquiry against petitioner as alleged? ..OPR2.
- (10) If issue No. 9 is proved in affirmative, whether representative of principal employer has illegally thrown petitioner out of job as alleged? ..OPR2.

Relief:

10. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	: Yes, as against respondent No. 2
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: No
Issue No. 5	: No
Issue No. 6	: Unpressed
Issue No. 7	: Yes
Issue No. 8	: Unpressed
Issue No. 9	: Unpressed
Issue No. 10	: Unpressed

Relief. : Claim petition is partly allowed against respondent No. 2 and dismissed against respondent no.1 per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1, 2 & 7:

11. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to mention here that respondent No. 2 after filing reply to claim petition opted raising no objection if respondent No. 2 was proceeded against exparte as is evident from statement Shri Satpal Sharma Contractor respondent No. 2 on oath before this court on 4-5-2018. The case of the claimant/petitioner primarily remains that she had been in employment *w.e.f.* 15-7-2007 as unskilled worker through contractor (Shri Sat Pal Sharma) respondent No. 2 who had been engaged on behalf of respondent No.1 M/s. Swiss Garner Life Science, Una where she remained working as helper in packing department. It further remains case of the claimant/petitioner that she continued to work in the factory premises of respondent No.1 as helper and was later asked to do work of sweeping which she

continuously did till 23rd October, 2010 when she was not allowed to work by the officials of respondent no.1 instead she was thrown out of the factory premises. Be it stated that from claim petition, it is not clear if petitioner was seeking relief against which of the two respondents with regard to her illegal termination but in arguments, Ld. Counsel for the petitioner has made futile endeavour to implicate both the respondents irrespective the fact that petitioner as PW1 in cross-examination had specifically admitted that respondent No.1 had not issued any appointment letter to petitioner. Moreover, petitioner has further in unambiguous terms admitted on oath that agreement for providing outsource workers was between respondent No.1 and respondent No. 2 M/s Jai Durga Service Manpower. From facts revealed in cross-examination of PW1, it is not clear if her salary was paid by respondent No. 2. She has emphasized in cross-examination that her salary was received in factory premises of respondent No.1 besides maintained that she had been engaged by respondent no.1 but factually her relationship with either of the respondents as workman is to be determined on the basis of evidence on record.

13. RW1 Sh. J.P. Sharma, DGM, M/s. Swiss Garner has sworn in affidavit Ex. RW1/A in which it was specifically mentioned that respondent No.1 was getting labour/manpower on temporary basis from respondent No. 2 M/s. Jai Durga Service Manpower, the then Contractor and that petitioner was receiving salary from respondent No. 2 beside petitioner had remained engaged from 1st August, 2008 to September, 2010. It has been denied by petitioner as PW1 that her service had been illegally terminated by respondents rather maintained that petitioner had never been engaged by respondent No.1 and thus relationship of respondent no.1 being employer of petitioner is not at all established. Various documents such as Mark-R1 (7 pages) of proceedings before Labour Inspector-cum-Conciliation Officer, copy of register of workers Mark-R2, copy of attendance register Mark-R3, copy of salary register Mark-R4, copy of attendance statement Mark-R5, copy agreement dated 1-7-2009 as Mark-R6 have been filed by respondent No.1 in support of plea that engagement of petitioner was by respondent No. 2, RW1 has admitted that no show cause notice had been issued to petitioner and stated of own that petitioner was not its employee which does establish violation of any provisions of Act particularly when petitioner had not been engaged by respondent No.1 directly but respondent No. 2 as manpower supplier had sent petitioner to respondent No.1. RW2 Shri Vinod Kumar, working as Assistant General Manager with respondent No.1 has testified on oath that agreement Ex. RW6/A was entered into with respondent No. 2 for providing manpower/labour who had provided service of petitioner Smt. Pammi Devi in August, 2008 and she remained working till September, 2010. This witness has also in unequivocal terms maintained that petitioner was not employee of respondent No.1 rather all wages were being given to her by respondent No. 2 and her attendance etc. was maintained by respondent No. 2 who merely sent wage bills to respondent No.1. It has further been stated in affidavit that respondent No. 2 provided manpower as per requirement of respondent no.1 besides maintained that service of petitioner had never been terminated by respondent No.1 as petitioner was not paid any wages by it moreover when petitioner was sent by respondent No. 2 whose attendance and wages etc. were maintained by it and that respondent No.1 never paid any wages to petitioner directly by respondent No.1 and thus petitioner cannot be said to be employee of respondent No.1 irrespective of fact that petitioner in cross-examination asserted that wages was paid to her in factory premises but in case she has not stated that salary was paid by respondent No.1. Thus, two officials of respondent No.1 have denied that petitioner had been engaged by respondent instead she was employee of respondent No. 2 and was receiving salary in terms of contract/agreement supplying manpower between respondents would determine relationship of petitioner with respondent No.1. Significantly, respondent No. 2 Shri Sat Pal Sharma, contractor appeared before this court and made statement on oath that on 4-5-2018 stating therein that he had filed reply on 4-4-2012 but did not want to lead evidence and that

he had no objection in case *ex parte* proceeding were carried out against him. Non appearance of respondent No. 2 to contest the claim petition and by not leading evidence necessarily follows that plea set up in the reply does not stand proved as noted above which further falsified his plea that respondent No.1 was principal employer of petitioner.

14. To appreciate the controversy in issue, it would be relevant to go through agreement entered into between respondents No.1 and 2. Ex. RW6/A is the agreement dated 27th July, 2010 which was valid from 1-7-2010 to 1-7-2011 stipulating therein certain terms and conditions. To prove this document, respondent No.1 has examined Shri. K.S. Subramaniam as RW6 who has stepped into witness box deposed on oath being witness to the agreement which was signed by authorized signatory on behalf of respondents. This document further shows that agreement was duly signed by Shri Sat Pal Sharma of M/s. Jai Durga Service Manpower for and on behalf of respondent No. 2. It is evident from agreement that respondent No. 2 was engaged in business of providing manpower on temporary basis having business at Mehatpur Una, H.P. Be it noticed that clause 2 of the agreement clearly provides **that all personnel provided to the Company shall be employees of M/s. Jai Durga Service and all the statutory liabilities i.e. wages, allowances, ESI, PF etc. will be taken care of by M/s. Jai Durga Service who shall provide to the company on demand all necessary documents relating to PF, ESI, wages etc. In case of the Contractor failing to deposit ESI & PF dues of his employees, the company shall deduct these statutory dues from the payments of the Contractor & deposit the same with the respective department on behalf of the Contractor.** From this document, it abundantly clear that not only petitioner but all the personnel being provided by respondent No. 2 as manpower provider were to be the employee of respondent No.2 which leads to irresistible inference that there existed no relationship of employer and employee between petitioner and respondent No.1.

15. Ld. Counsel for respondent has taken me through agreement dated 1st July, 2009 Mark-R6 which has also similar condition to that of Ex. RW6/A with the respondent No. 2 in which respondent No. 2 had agreed to provide manpower to respondent No.1. In support of his claim that petitioner was employee of respondent No. 2 and that respondent No.1 was merely making a lump sum payment of wages for several workers including petitioner to respondent No. 2 reliance has further placed upon Ex. RW3/B which is copy of plaint of Civil Suit for recovery of Rs.4,73,443/- filed by respondent No. 2 Sat Pal Sharma contractor as against respondent No.1. The suit in question has been proved with the aid of examining RW3 Smt. Megha Kumari Civil Ahlmad of Civil Judge, Una who has stepped into witness box stating therein that Civil Suit RBT No. 385/18/13 suit for recovery was pending for hearing on 17-11-2018 against respondent No.1 filed by respondent No. 2 filed on 9-12-2013 whereas the claim of petitioner *qua* termination relates to year 2010 in the month of July. Such evidence further established that respondents No.1 and 2 were litigating for recovery of Rs. Rs. 4,73,443/- for the manpower provided to the respondent No.1 by respondent No. 2 in pursuance to agreement for providing manpower and that respondent No.1 did pay all wages resulting in filing of suit for recovery. It further strengthens the plea of respondent No.1 that petitioner was not its employee and respondent No. 2 was contractor and employer and there was no responsibility or liability of the respondent No.1 in pursuance to agreement referred which would determine relationship between the respondents petitioner being employee of respondent No. 2.

16. Another aspect of the case which cannot be lost while appreciating evidence is that respondent No.1 in its evidence had examined Shri Naresh Kumar, Labour Inspector Una who has testified on oath that according to official records of M/s. Jai Durga Service was

owned by Shri Sat Pal Sharma as Proprietor who was contractor registered under Labour Act, 1970 and thus respondent No. 2 would be the employer of petitioner besides this witness has also admitted that respondent No. 1 engaged its own employees through contractor respondent No. 2 which supports plea of respondent No.1 that petitioner was employee of respondent No.1. RW5 Ravi Kant Singh, Branch Manager, ESCI Mehatput has testified on oath that M/s. Jai Durga Service respondent No.2 was registered ESCI and Ex. R5 was declaration form in which name of petitioner was reflected at Sl. No. 34. From testimony of RW5 coupled with Ex. R5, it is abundantly clear that petitioner was employee of respondent No. 2 on the basis of returns filed by respondent No. 2 in the month of April 2008 to September 2008, October 2008 to March, 2009, April, 2009 to September 2009 and October 2009 to April, 2010. As such all the documentary evidence as stated above squarely establish that petitioner was employee of respondent No. 2 and not of respondent No.1.

17. Enough has been emphasized by Ld. Counsel for petitioner submitting that Sub Section (4) of Section 21 Contract Labour (Regulation & Abolition) Act, 1970 makes it clear that as per terms of contract, the principal employer is liable to pay wages and other statutory dues admissible to workman if contractor who provided manpower omitted to clear dues of workman. It is also contended by Ld. Counsel for respondent No.1 that liability to pay wages, ESI etc. basically remains that of the contractor however the payment has to be ensured by the principal employer. The liability postulated under sub section (1) *qua* workman would come into picture if contractor who engaged manpower omitted to pay wages and other statutory benefits admissible to workman has to be paid by contractor in absence of which principal employer would pay wages and other benefits admissible to workman but the amount so paid to workman shall be deducted from bill of contractor who supplied manpower. It is not the case of the petitioner that when claim petition was filed, respondent No.2 did not pay wages and dues rather plea of petitioner remains that she was illegally terminated seeking relief of re-instatement with all consequential benefits. Ld. Counsel for petitioner has relied upon case titled as **Bharat Earth Movers Ltd. Vs. Gangaramaiah** reported in **2007 (2) KarLJ 225** which dealt with determination of dues recoverable by claimant under Section 33-C (2) of Act. In the judgment of Hon'ble Court of Karnataka has clearly held that liability of principal employer *qua* entitlement of dues of petitioner comes into picture when contractor did not pay and that recovery could be made by principal employer from contractor after making payment to the petitioner and deducting from bill of contractor. In the case in hand, facts are together different. It is not the case of petitioner that respondent No.1 should make payment which were not paid by respondent No. 2 rather it is case of illegal termination which is to be determined on the basis of evidence adduced by parties before this court. If respondent No. 2, contractor was engaged by principal employer i.e. respondent No.1, the liability to pay would arise if respondent No. 2 did not pay dues to petitioner rather in this case, there is reliable evidence establishing that there existed agreement in different years between respondents and thereafter the respondents after termination of petitioner were litigating against each other and that respondent No. 2 has filed suit for recovery against respondent No.1. At the cost of repetition, it would be relevant to mention that in the case before Hon'ble High Court of Karnataka relied by Ld. Counsel for petitioner to application under Section 33-C (2) of Act was pending for determination and not claim petition under Industrial Disputes Act, 1947 *qua* illegal termination of petitioner. In the case in hand petitioner alleges illegal termination and seeks relief of re-instatement with all consequential benefits which was not the relief sought for before the Hon'ble High Court of Karnataka and thus I am of the opinion that above stated judgment (*supra*) relied upon by Ld. Counsel for petitioner is not at all applicable in the present case.

18. In view of the foregoing discussions, it is held that petitioner had worked for more than 240 days as employee of respondent No. 2 in the factory of respondent No.1 and that

her service had been illegally terminated in July, 2010 by respondent No. 2 besides it has not established that petitioner had been served with any show cause notice or notice to terminate as respondent No. 2 had opted not to contest and prove the allegation in support of his reply. Since the service agreement existed between respondents as stated above according to which all the employees *i.e.* personnel provided to respondent No.1 were employees of respondent No.2 in terms of Clause 2 of Agreement as discussed in foregoing paras and thus it is only respondent No.2 who had illegally terminated service of petitioner in July, 2010 without recouring to lawful procedure particularly when petitioner did not report for duty or say abandoned the job and thus respondent No.2 had violated Section 25-F of Act and for said reason, petitioner would be entitled to be re-instated in service with continuity and back wages as claimed by petitioner as plea of back wages of petitioner has remained unchallenged by respondent No. 2 as no evidence was led. However, respondent No.1 has not asked any question on non payment of wages as petitioner claimed to have remained unemployed *i.e.* not gainfully employed after her termination from service. Since respondent No.2 has not challenged plea of petitioner on having remained not gainfully employed same is to read against respondent No. 2. In view of foregoing discussions, it is held that petitioner was engaged by respondent No. 2 on contract basis and not as daily wage worker of respondent No.1 who had remained not gainfully employed ever since her illegal termination as stated in foregoing paras. However, the dispute existed between petitioner and respondent No. 2 as petitioner was engaged on contract basis. It is pertinent to mention here that onus of proof regarding issues No. 8 to 10 was on respondent No. 2 on which no evidence has been led by respondent No. 2 who was proceeded against *ex parte* as stated above and as such issues in questions are answered unpressed against the respondent No. 2 in favour of respondent No.1 and consequently to that effect in favour of petitioner. In view of above said discussions, issues No.1 is answered against respondent No. 2 and issue No. 2 is decided as discussed whereas issue No.7 is decided in affirmative holding that petitioner was engaged by respondent No. 2 who supplied manpower to respondent No.1 including petitioner on contract basis and not on daily wage which can be safely gathered from oral as well as documentary evidence on record led by respondent No.1. Issues as stated above are decided accordingly.

Issue No. 3:

19. Ld. Counsel for respondent No.1 contended that claim petition is not maintainable as respondent No.1 had not engaged petitioner and therefore there was no question of her illegal termination from service. In support of his contention, he has taken me through agreement dated 1-7-2009 which clearly stipulated in para No. 2 that all the personnel staff by respondent No. 2 to respondent No.1 shall remain employee of respondent No. 2. Be it stated that petitioner factually remained employee of respondent No. 2 only as has been held in foregoing paras. Since petitioner was employee of respondent No. 2 claim petition against respondent No.1 to that effect is not maintainable on the ground of being a principal employer as respondent No. 2 was a contractor supplying manpower to of respondent no.1 including petitioner. Accordingly, claim petition of petitioner against the respondent No.1 is not maintainable as respondent No.1 had not terminated service of petitioner or say illegally terminated her from service. This issue is answered in negative, however claim petition of petitioner would be maintainable against the respondent No. 2. This issue is answered in negative against petitioner *qua* respondent No.1.

Issues No. 4 & 5:

20. Both these issue were not pressed before me at the time of arguments. Since the service of petitioner had been illegally terminated she could legitimately raise industrial dispute as well as claim relief and similarly she would have cause of action. Both these issues are decided accordingly.

Issues No. 6 and 8 to 10:

21. All these issues were not pressed by respondent No. 2 as Shri Satpal Sharma Contractor who raised various legal objections in his reply did not lead any evidence in support of reply and on 4-5-2018 made statement on oath before this court that he had no objection if he was proceeded against *ex parte*. That being so, plea of petitioner as against respondent No. 2 has remained un-repudiated and at the same time, plea set up by respondent No.1 as against respondent No. 2 has also remained unchallenged. As such, when respondent No. 2 after filing reply did not lead any evidence who could even join later in present proceedings, this court is left with no option but to decide issues Nos. 6 and 8 to 10 as unpressed against respondent No. 2 and in favour of petitioner as well as against respondent No.1 to the extent these respondents have rival contention *qua* claim of petitioner.

Relief:

22. As sequel to my findings on foregoing issues, the reference/claim petition is partly allowed against respondent No. 2 and dismissed against respondent No.1. Accordingly, the respondent No. 2 is hereby directed to re-engage the petitioner forthwith who shall be entitled to seniority and continuity in service from the date of her illegal termination **with full back wages**. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 6th day of December, 2018.

Sd/-

(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No.	: 135/2013
Date of Institution	: 29-8-2013
Date of Decision	: 07-12-2018

Shri Vijay Kumar s/o Shri Ram Singh, r/o Village Upper Majhetali, P.O. Pathiar, Tehsil & Distt. Kangra, H.P. ..Petitioner.

Versus

1. The Chairman-cum-Managing Director, Sahayta Security Services Pvt. Ltd., Hospital Road Mandi, Distt. Mandi, H.P.

2. The Director, Sahayta Security Services Pvt. Ltd. Baijnath Road, Near Kapila Nursing Home Palampur, Tehsil & P.O. Palampur, Distt. Kangra, H.P. ..Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	:Sh Gaurav Pathania, Adv.
For the Respondent(s)	:Sh. N.L. Kaundal, AR
	:Sh. Vijay Kaundal, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Sh. Vijay Kumar s/o Sh. Ram Singh, Village Upper Majhetali, P.O. Pathiar, Tehsil & Distt. Kangra, H.P. by (i) The Chairman-*cum*-Managing Director, Sahayta Security Services Pvt. Ltd., Hospital Road Mandi, Distt. Mandi, H.P. (ii) The Director, Sahayta Security Services Pvt. Ltd., Baijnath Road, Near Kapila Nursing Home Palampur, Tehsil & P.O. Palampur, Distt. Kangra *w.e.f.* 23-3-2012 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what benefits, including reinstatement, amount of back wages, salary, seniority, past service benefits and compensation the above worker is entitled to from the above employers?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition reveal that petitioner above-named had been engaged on 1-11-2007 as Security Guard (gunman) by the respondents on a monthly salary of Rs. 6,200/- where petitioner continued to work till 23-3-2012 when his service was illegally terminated by respondents. It transpires from claim petition that petitioner had performed his duties to the best of sincerity and upto the satisfaction of his superior but without any rhyme or reason, petitioner had been illegally disengaged by respondents. It is alleged that demand notice was served by petitioner to respondent in pursuance to which matter was taken before Labour Inspector-*cum*-Conciliation Officer, Palampur but the conciliation could not be effected *inter-se* parties. It is alleged that respondents while terminating service of petitioner had not issued any show cause notice or notice for termination raising charge sheet alternatively payment of wages of one month in lieu thereof and thus respondent had violated Section 25 -F of the Industrial Disputes Act, 1947 (hereinafter called ‘Act’ for brevity). It is further alleged that respondents while terminating service of petitioner had not followed principle of ‘Last come First go’ envisaged under Section 25-G of Act as juniors to petitioner had been retained and at the same time, while engaging fresh hands, no notice was ever given to petitioner calling upon him to join duty and thereby violated Section 25-H of Act. It is further alleged that petitioner was still ready and willing to serve and join respondents as he was the only bread earner of his family dependant upon him. Accordingly, petitioner prays that respondents be directed to re-engage him as Security Guard (Gunman) besides intervening period from his disengagement till re-engagement consequent upon grant of relief from this court may be ordered to be treated as being on duty period for the purposes of continuity and seniority and back wages besides to any other relief petitioner is found entitled.

4. The respondents contested claim petition, filed reply *inter-alia* taken preliminary objections *qua* jurisdiction, maintainability, estoppel respondent being authorized by H.P.

Govt. to provide security services subject to conditions which had not been complied or fulfilled by petitioner had not come to the court with clean hands. On merits admitted that petitioner had been engaged by respondents on monthly salary of Rs. 6,200/- per month however asserted that petitioner had worked for different clients on pool basis under different contracts arrived in between the respondents and different clients during the period petitioner served. It is alleged that at the time of engagement, petitioner had filled up application form and all the terms and conditions of employment were settled by respondents who had signed and accepted the conditions of appointment order as correct which are now binding on petitioner. It is emphatically denied that service of petitioner had ever been terminated by respondents rather petitioner was transferred to join at another location where he did not join although as per Clause 6 of terms and conditions of his employment, petitioner was to join to new place of posting to which he refused and did not report for duty and thus respondents had not terminated service of petitioner but petitioner himself had abandoned the job and engaged another workmen as per his convenience. It is also contended that respondents were ready to engage petitioner if he was willing to join service although subject to availability of vacancy. Admitted that consequent upon serving demand notice by petitioner conciliation proceedings took place before Labour Inspector-*cum*-Conciliation Officer which failed and consequently failure report was sent followed by reference to this court. Thus, reiterating their stand jointly respondents have asserted that petitioner had abandoned the job and thus there was no requirement of issuance of notice or payment of compensation envisaged under Section 25-F of Act. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, the petitioner has examined Shri Mohinder Singh and Sh. Bakshi Ram Rana as PW2 and PW3 respectively, copy of demand notice Ex. PW1/B, copy of bill dated 1-9-2011 Ex. PW1/C, copy of I.D. Card Ex. PW1/D, copy of Arm Licence Ex. PW1/E, submissions of record as sought by petitioner Ex. PW3/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondents examined RW1 Shri B.R. Rana, Director Sahayta Security Services Ltd. as RW1 tendered/proved affidavit Ex. RW1/A copy of license Ex. RW1/B, copy of notification dated 28-6-2011 Ex. RW1/C, copy of application form Ex. R-1, copy of reply to demand notice Ex. R- 2 and closed the evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. A.R. representing respondents, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 21-4-2015 for determination which are as under:—

- (1) Whether termination of the services of the petitioner by the respondents *w.e.f.* 23-3-2012 is/was improper and unjustified as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the petitioner has abandoned the job on his own as alleged. If so, its effect? ..*OPR.*

- (4) Whether the petition is not maintainable in the present form as alleged? ..OPR.
- (5) Whether the petitioner has not come to the court with clean hands as alleged? ..OPR.
- (6) Whether the claim petition is bad on account of act and conduct as alleged? ..OPR.

Relief

9. It is pertinent to mention here that *vide* order dated 01-5-2014 of my Ld. predecessor *ex parte* decree was set aside and case was registered at its old number.

10. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	: Yes
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: No
Issue No. 5	: No
Issue No. 6	: No
Relief.	: Petition is partly allowed in favour of petitioner per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 to 3 & 6:

11. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. Relationship of petitioner having been engaged as Security Guard (Gunman) by respondents is not in dispute. It is also not in dispute that petitioner had worked with respondents from 1-11-2007 to 23-3-2012. It is admitted case of parties that petitioner had been appointed on submitting application Ex. R1 on which signature of petitioner existed accepting terms and conditions of employment as Security Guard (Gunman) with the respondents. The case of the petitioner remains that he has been illegally terminated by respondents while working as Security Guard (Gunman) whereas the plea of respondents remains that they did not terminate service of petitioner rather petitioner of his own accord abandoned the job and did not resume duty. In the backdrop of foregoing admitted facts, it needs to be determined if service of petitioner had been illegally terminated by respondents in violation of Section 25-F of Act.

13. Stepping into witness box as PW1 petitioner has tendered and proved his affidavit Ex. PW1/A deposed on oath as maintained in claim petition which proves that petitioner had been engaged by respondents on 1-11-2007. The fact that petitioner remained engaged till 23-3-2012 is also not in dispute as can also be gathered from testimony on oath of RW1 Shri B. R. Rana, Director Sahayta Security Services Ltd. The sole controversy which falls for adjudication is if petitioner was terminated orally by respondents as claimed or that petitioner had abandoned the job who did not resume duty despite intimation by respondents. To appreciate evidence led by parties in support of their rival contentions, it would be pertinent to go through the cross- examination of RW1, the sole witness on behalf of respondents in which he has admitted that petitioner had remained engaged from 1-11-2007

upto 23-3-2012 as Security Guard (Gunman) which clearly establishes that petitioner had worked for more than 240 days in preceding 12 months from date of termination *i.e.* on 23-3-2011 irrespective the fact that mandays on record had not been proved by either parties however in view of specific admission of RW1 to this effect, this court is left with no option but hold that petitioner had worked for 240 days with respondent as stated above. It is admittedly not the case of respondents that any notice under Section 25-F of Act was issued by respondents before terminating his service as plea of respondents remained that petitioner had abandoned the job. RW1 has shown his inability to tell if any notice was given to petitioner when he abandoned the job. Be it noticed being sole witness on behalf of respondents. RW1 was required to deny fact of termination *moreso* when it remains plea of respondents that petitioner had abandoned the job as he did not report for duty. RW1 has further admitted that petitioner had issued demand notice Ex. R1 raising industrial dispute however stated of his own that respondent's company had filed reply as Ex. R2. On the other hand, nothing in cross-examination of petitioner as PW1 could be elicited by Ld. A.R. for respondents by which it could be established that petitioner had not factually worked for 240 days irrespective of that PW1 has admitted that he had not been posted at one place in 240 days and this aspect was clarified by PW1 of his own by stating that at the instance of respondents, petitioner was made to work at different places although payments of wages were being made by respondents which necessarily follows that the relationship of workman and employer existed between the parties. In any case, petitioner continued to be employee of respondents till he was disengaged who were paying petitioner salary every month. He has further clarified that petitioner was assigned work according to requirement/demand of work which shows that petitioner like other security guard had been engaged by respondents who provided manpower to various clients/company.

14. Ex. R1 is the application form for employment which had been filled by the petitioner upon which thumb mark/finger prints existed besides signature. This document further shows that there were 16 conditions of post employment which petitioner had accepted at the time of joining service. It is revealed from condition No.7 that **petitioner could be posted anywhere in India**. Referring to this condition and cross-examination of PW1 in which **petitioner has specifically admitted that he was ready to work at any place wherever vacancy existed** clearly establish that petitioner could be asked by respondents to serve anywhere in India. As such, petitioner in cross-examination has not disputed the conditions of employment besides expressed his willingness to work anywhere he would be deputed by respondents. In cross-examination of RW1, Ld. Counsel for the petitioner has not asked any question regarding transfer of petitioner to another place when petitioner left the job or terminated as claimed by the petitioner which goes to show that on being deputed to place which was not convenient for the petitioner, he did not join duty. Even in demand notice nothing has been stipulated about transfer of petitioner to another place rather in demand notice only aspect of illegal termination on 23-3-2012 by respondent has been asserted. Ex. R2 is the reply filed by the respondents which revealed that respondents did not terminate petitioner's service rather he was asked to be present at another duty post/location to which petitioner refused to go. Falsity of plea so raised by respondents gets surfaced as was not specifically mentioned at which place of posting petitioner did not join and thereby abandoned the job which manifestly belie stand so taken by respondents.

15. In order to prove of plea of abandonment, respondents were required to establish that consequent upon abandoning the job, they had issued notice calling upon petitioner to join or resume duty but in its evidence respondents have not stated so that they had even issued any notice calling upon petitioner to join instead they presumed or say inferred that since petitioner had not been recruited for new place of posting he abandoned the job. It has

rightly been contended by Ld. Counsel for the petitioner that intention to abandon the job has to be gathered from circumstances of the case but at the same time respondents were not absolved from their accountability to have resorted to lawful procedure when employee/workman did not report for duty.

16. Ld. Authorized Representative for respondents has placed reliance upon the judgment of Hon'ble Apex Court titled as **G.T. Lad and ors. vs. Chemicals and Fibres India Ltd.** reported in **AIR 1979 SC 582**. Relying upon the judgment aforesaid, it has been contended by Ld. Counsel for petitioner that intention to abandon the job could not be inferred merely from the fact that petitioner had not joined at any new place which has although not been disclosed in pleadings and proved in evidence by respondents as such bald plea of respondents that petitioner had not join at new place of posting/location appears to be afterthought and an excuse to remove petitioner from service. It was necessary for respondents to have revealed new place of posting where petitioner refused to join. As such, the plea of abandonment raised by respondents merits rejection for the reasons stated hereinabove. Even otherwise also if petitioner was absenting unauthorizedly from duty respondents were required to issue show cause notice or hold inquiry raising charge-sheet and having failed to do so, petitioner is held to be illegally terminated. As has come in the evidence that petitioner was not issued any notice or paid wages in lieu of notice period envisaged under Section 25-F of Act and that petitioner had worked for more than 240 days, it is held that petitioner had worked for 240 days in preceding 12 months besides that respondents had violated provisions of Section 25-F of Act and therefore termination of petitioner is held to be illegal and thus relief of reinstatement and other consequential benefits as claimed by petitioner are liable to be given to him.

17. In so far plea of back wages ever since termination of petitioner is concerned, it would be relevant to refer to cross-examination of petitioner in which he has admitted that he had cultivable land and also had earned livelihood as a labourer and thus, it cannot be stated that petitioner was not gainfully employed ever since termination of his service on 23-3-2012 by respondents. Ld. D.A. for respondent has relied upon judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. As such, when petitioner was gainfully employed after his termination he would not be entitled for back wages although for all other consequential benefits, seniority and continuity in service. Issue No.1 is decided in affirmative whereas issue No. 3 is answered in negative and issue No. 2 is decided as discussed. For the reasons stipulated in the foregoing paras claim petition could not be stated to be bad on account of act and conduct as petitioner had been illegally terminated by respondents who had not abandoned the job and therefore it cannot be stated that due to his act and conduct claim is bad and thus petitioner is not entitled to relief of re-instatement as sought for along-with consequential benefits. Issue No. 6 is decided in negative in favour of petitioner and against the respondents.

Issue No. 4:

18. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Authorized Representative representing respondents has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea *qua* non maintainability merits rejection outright. Otherwise also, from pleadings and evidence on

record, no inference of claim petition being not maintainable could be raised against claimant/petitioner moreso when there are specific findings in foregoing paras that service of petitioner had been illegally terminated. This issue is decided in favour of petitioner and against the respondent.

Issue No. 5:

19. This issue was not pressed by the Ld. Authorized Representative for the respondents at the time of arguments as such issue No. 5 is decided as unpressed in favour of petitioner and against the respondents.

Relief:

20. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. Accordingly, the respondents are hereby directed to re-engage the petitioner forthwith who shall be entitled to seniority and continuity in service **except back wages** however respondents are further directed to pay Rs.10,000/- to the petitioner as litigation costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 7th day of December, 2018.

Sd/-
(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No.	: 120/2013
Date of Institution	: 20-8-2013
Date of Decision	: 07-12-2018

Shri Daleep Kumar s/o Shri Khajana Ram, r/o V.P.O. Kandwari, Tehsil Palampur,
Distt. Kangra, H.P. ..Petitioner.

Versus

1. The Chairman-cum-Managing Director, Sahayta Security Services Pvt. Ltd., Hospital Road Mandi, Distt. Mandi, H.P.

2. The Director, Sahayta Security Services Pvt. Ltd. Baijnath Road, Near Kapila Nursing Home Palampur, Tehsil & P.O. Palampur, Distt. Kangra, H.P. ..Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh Gaurav Pathania, Adv.
 For the Respondent(s) : Sh. N.L. Kaundal, AR
 : Sh. Vijay Kaundal, Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Sh. Daleep Kumar s/o Sh. Khajana Ram, V.P.O. Kandwari, Tehsil Palampur, Distt. Kangra, H.P. by (i) The Chairman-*cum*-Managing Director, Sahayta Security Services Pvt. Ltd., Hospital Road Mandi, Distt. Mandi, H.P. (ii) The Director, Sahayta Security Services Pvt. Ltd., Baijnath Road, Near Kapila Nursing Home Palampur, Tehsil & P.O. Palampur, Distt. Kangra *w.e.f.* 01-5-2011 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what benefits, including reinstatement, amount of back wages, salary, seniority, past service benefits and compensation the above worker is entitled to from the above employers?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition reveal that petitioner above-named had been engaged on 1-10-2007 as Security Guard (gunman) by the respondents on a monthly salary of Rs. 6,200/- where petitioner continued to work till 1-5-2010 when his service was illegally terminated by respondents. It transpires from claim petition that petitioner had performed his duties to the best of sincerity and upto the satisfaction of his superior but without any rhyme or reason, petitioner had been illegally disengaged by respondents. It is alleged that demand notice was served by petitioner to respondent in pursuance to which matter was taken before Labour Inspector-*cum*-Conciliation Officer, Palampur but the conciliation could not be effected *inter-se* parties. It is alleged that respondents while terminating service of petitioner had not issued any show cause notice or notice for termination raising charge sheet alternatively payment of wages of one month in lieu thereof and thus respondent had violated Section 25 -F of the Industrial Disputes Act, 1947 (hereinafter called ‘Act’ for brevity). It is further alleged that respondents while terminating service of petitioner had not followed principle of ‘Last come First go’ envisaged under Section 25-G of Act as juniors to petitioner had been retained and at the same time, while engaging fresh hands, no notice was ever given to petitioner calling upon him to join duty and thereby violated Section 25-H of Act. It is further alleged that petitioner was still ready and willing to serve and join respondents as he was the only bread earner of his family dependant upon him. Accordingly, petitioner prays that respondents be directed to reengage him as Security Guard (Gunman) besides intervening period from his disengagement till re-engagement consequent upon grant of relief from this court may be ordered to be treated as being on duty period for the purposes of continuity and seniority and back wages besides to any other relief petitioner is found entitled.

4. The respondents contested claim petition, filed reply *inter-alia* taken preliminary objections *qua* jurisdiction, maintainability, estoppel respondent being authorized by H.P. Govt. to provide security services subject to conditions which had not been complied or

fulfilled by petitioner had not come to the court with clean hands. On merits admitted that petitioner had been engaged by respondents on monthly salary of Rs. 6,200/- per month however asserted that petitioner had worked for different clients on pool basis under different contracts arrived in between the respondents and different clients during the period petitioner served. It is alleged that at the time of engagement, petitioner had filled up application form and all the terms and conditions of employment were settled by respondents who had signed and accepted the conditions of appointment order as correct which are now binding on petitioner. It is emphatically denied that service of petitioner had ever been terminated by respondents rather petitioner was transferred to join at another location where he did not join although as per Clause 6 of terms and conditions of his employment, petitioner was to join to new place of posting to which he refused and did not report for duty and thus respondents had not terminated service of petitioner but petitioner himself had abandoned the job and engaged another workmen as per his convenience. It is also contended that respondents were ready to engage petitioner if he was willing to join service although subject to availability of vacancy. Admitted that consequent upon serving demand notice by petitioner conciliation proceedings took place before Labour Inspector-cum-Conciliation Officer which failed and consequently failure report was sent followed by reference to this court. Thus, reiterating their stand jointly respondents have asserted that petitioner had abandoned the job and thus there was no requirement of issuance of notice or payment of compensation envisaged under Section 25-F of Act. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18, Rule 4 CPC, the petitioner has examined Shri Mohinder Singh and Sh. Bakshi Ram Rana as PW2 and PW3 respectively, copy of demand notice Ex. PW1/B, copy of bill dated 1-9-2011 Ex. PW1/C, copy of I.D. Card Ex. PW1/D, copy of Arm Licence Ex. PW1/E, submissions of record as sought by petitioner Ex. PW3/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondents examined RW1 Shri B.R. Rana, Director Sahayta Security Services Ltd. as RW1 tendered/proved affidavit Ex. RW1/A copy of license Ex. RW1/B, copy of notification dated 28.6.2011 Ex. RW1/C, copy of application form Ex. R-1, copy of reply to demand notice Ex. R- 2 and closed the evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. A.R. representing respondents, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 21-4-2015 for determination which are as under:—

- (1) Whether termination of the services of the petitioner by the respondents *w.e.f.* 01-5-2011 is was improper and unjustified as alleged? *..OPP.*
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? *..OPP.*
- (3) Whether the petitioner has abandoned the job on his own as alleged. If so, its effect? *..OPR.*
- (4) Whether the petition is not maintainable in the present form as alleged? *..OPR.*

- (5) Whether the petitioner has not come to the court with clean hands as alleged?
..OPR.
- (6) Whether the claim petition is bad on account of act and conduct as alleged?
..OPR.

Relief

9. It is pertinent to mention here that *vide* order dated 01-5-2014 of my Ld. predecessor *ex parte* decree was set aside and case was registered at its old number.

10. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	: Yes
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: No
Issue No. 5	: No
Issue No. 6	: No
Relief.	: Petition is partly allowed in favour of petitioner per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 to 3 & 6:

11. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. Relationship of petitioner having been engaged as Security Guard (Gunman) by respondents is not in dispute. It is also not in dispute that petitioner had worked with respondents from 1-10-2007 to 1-5-2011. It is admitted case of parties that petitioner had been appointed on submitting application Ex. R1 on which signature of petitioner existed accepting terms and conditions of employment as Security Guard (Gunman) with the respondents. The case of the petitioner remains that he has been illegally terminated by respondents while working as Security Guard (Gunman) whereas the plea of respondents remains that they did not terminate service of petitioner rather petitioner of his own accord abandoned the job and did not resume duty. In the backdrop of foregoing admitted facts, it needs to be determined if service of petitioner had been illegally terminated by respondents in violation of Section 25-F of Act.

13. Stepping into witness box as PW1 petitioner has tendered and proved his affidavit Ex. PW1/A deposed on oath as maintained in claim petition which proves that petitioner had been engaged by respondents on 1-10-2007. The fact that petitioner remained engaged till 1-5-2011 is also not in dispute as can also be gathered from testimony on oath of RW1 Shri B.R. Rana, Director Sahayta Security Services Ltd. The sole controversy which falls for adjudication is if petitioner was terminated orally by respondents as claimed or that petitioner had abandoned the job who did not resume duty despite intimation by respondents. To appreciate evidence led by parties in support of their rival contentions, it would be pertinent to go through the cross-examination of RW1, the sole witness on behalf of respondents in which he has admitted that petitioner had remained engaged from 1-10-2007 upto 1-5-2010 as Security Guard (Gunman) which clearly establishes that petitioner had

worked for more than 240 days in preceding 12 months from date of termination *i.e.* on 01-5-2011 irrespective the fact that mandays on record had not been proved by either parties however in view of specific admission of RW1 to this effect, this court is left with no option but hold that petitioner had worked for 240 days with respondent as stated above. It is admittedly not the case of respondents that any notice under Section 25-F of Act was issued by respondents before terminating his service as plea of respondents remained that petitioner had abandoned the job. RW1 has shown his inability to tell if any notice was given to petitioner when he abandoned the job. Be it noticed being sole witness on behalf of respondents. RW1 was required to deny fact of termination *moreso* when it remains plea of respondents that petitioner had abandoned the job as he did not report for duty. RW1 has further admitted that petitioner had issued demand notice Ex. R1 raising industrial dispute however stated of his own that respondent's company had filed reply as Ex. R2. On the other hand, nothing in cross-examination of petitioner as PW1 could be elicited by Ld. A.R. for respondents by which it could be established that petitioner had not factually worked for 240 days irrespective of that PW1 has admitted that he had not been posted at one place in 240 days and this aspect was clarified by PW1 of his own by stating that at the instance of respondents, petitioner was made to work at different places although payments of wages were being made by respondents which necessarily follows that the relationship of workman and employer existed between the parties. In any case, petitioner continued to be employee of respondents till he was disengaged who were paying petitioner salary every month. He has further clarified that petitioner was assigned work according to requirement/demand of work which shows that petitioner like other security guard had been engaged by respondents who provided manpower to various clients/company.

14. Ex. R1 is the application form for employment which had been filled by the petitioner upon which thumb mark/finger prints existed besides signature. This document further shows that there were 16 conditions of post employment which petitioner had accepted at the time of joining service. It is revealed from condition No. 7 that **petitioner could be posted anywhere in India**. Referring to this condition and cross-examination of PW1 in which **petitioner has specifically admitted that he was ready to work at any place wherever vacancy existed** clearly establish that petitioner could be asked by respondents to serve anywhere in India. As such, petitioner in cross-examination has not disputed the conditions of employment besides expressed his willingness to work anywhere he would be deputed by respondents. In cross-examination of RW1, Ld. Counsel for the petitioner has not asked any question regarding transfer of petitioner to another place when petitioner left the job or terminated as claimed by the petitioner which goes to show that on being deputed to place which was not convenient for the petitioner, he did not join duty. Even in demand notice nothing has been stipulated about transfer of petitioner to another place rather in demand notice only aspect of illegal termination on 1-5-2011 by respondent has been asserted. Ex. R2 is the reply filed by the respondents which revealed that respondents did not terminate petitioner's service rather he was asked to be present at another duty post/location to which petitioner refused to go. Falsity of plea so raised by respondents gets surfaced as was not specifically mentioned at which place of posting petitioner did not join and thereby abandoned the job which manifestly belie stand so taken by respondents.

15. In order to prove of plea of abandonment, respondents were required to establish that consequent upon abandoning the job, they had issued notice calling upon petitioner to join or resume duty but in its evidence respondents have not stated so that they had even issued any notice calling upon petitioner to join instead they presumed or say inferred that since petitioner had not been recruited for new place of posting he abandoned the job. It has rightly been contended by Ld. Counsel for the petitioner that intention to abandon the job has to be gathered from circumstances of the case but at the same time respondents were not

absolved from their accountability to have re-coursed to lawful procedure when employee/workman did not report for duty.

16. Ld. Authorized Representative for respondents has placed reliance upon the judgment of Hon'ble Apex Court titled as **G.T. Lad and ors. vs. Chemicals and Fibres India Ltd.** reported in **AIR 1979 SC 582**. Relying upon the judgment afore stated, it has been contended by Ld. Counsel for petitioner that intention to abandon the job could not be inferred merely from the fact that petitioner had not joined at any new place which has although not been disclosed in pleadings and proved in evidence by respondents as such bald plea of respondents that petitioner had not join at new place of posting/location appears to be afterthought and an excuse to remove petitioner from service. It was necessary for respondents to have revealed new place of posting where petitioner refused to join. As such, the plea of abandonment raised by respondents merits rejection for the reasons stated hereinabove. Even otherwise also if petitioner was absenting un-authorizedly from duty respondents were required to issue show casue notice or hold inquiry raising charge-sheet and having failed to do so, petitioner is held to be illegally terminated. As has come in the evidence that petitioner was not issued any notice or paid wages in lieu of notice period envisaged under Section 25-F of Act and that petitioner had worked for more than 240 days, it is held that petitioner had worked for 240 days in preceding 12 months besides that respondents had violated provisions of Section 25-F of Act and therefore termination of petitioner is held to be illegal and thus relief of re-instatement and other consequential benefits as claimed by petitioner are liable to be given to him.

17. In so far plea of back wages ever since termination of petitioner is concerned, it would be relevant to refer to cross-examination of petitioner in which he has admitted that he had cultivable land and also had earned livelihood as a labourer and thus, it cannot be stated that petitioner was not gainfully employed ever since termination of his service on 01-5-2011 by respondents. Ld. D.A. for respondent has relied upon judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. As such, when petitioner was gainfully employed after his termination he would not be entitled for back wages although for all other consequential benefits, seniority and continuity in service. Issue No. 1 is decided in affirmative whereas issue No. 3 is answered in negative and issue No. 2 is decided as discussed. For the reasons stipulated in the foregoing paras claim petition could not be stated to be bad on account of act and conduct as petitioner had been illegally terminated by respondents who had not abandoned the job and therefore it cannot be stated that due to his act and conduct claim is bad and thus petitioner is not entitled to relief of re-instatement as sought for along-with consequential benefits. Issue No. 6 is decided in negative in favour of petitioner and against the respondents.

Issue No. 4:

18. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Authorized Representative representing respondents has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea *qua* non maintainability merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner moreso when there are specific findings in foregoing paras that service of

petitioner had been illegally terminated. This issue is decided in favour of petitioner and against the respondent.

Issue No. 5:

19. This issue was not pressed by the Ld. Authorized Representative for the respondents at the time of arguments as such issue No. 5 is decided as unpressed in favour of petitioner and against the respondents.

Relief:

20. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. Accordingly, the respondents are hereby directed to re-engage the petitioner forthwith who shall be entitled to seniority and continuity in service **except back wages** however respondents are further directed to pay Rs.10,000/- to the petitioner as litigation costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 7th day of December, 2018.

Sd/-
(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No.	: 121/2013
Date of Institution	: 20-8-2013
Date of Decision	: 07-12-2018

Shri Om Parkash s/o Shri Dhanu Ram, r/o Village Kanarthu, P.O. Phtahar, Tehsil Baijnath, District Kangra, H.P. ..Petitioner.

Versus

1. The Chairman-cum-Managing Director, Sahayta Security Services Pvt. Ltd., Hospital Road Mandi, Distt. Mandi, H.P.

2. The Director, Sahayta Security Services Pvt. Ltd. Baijnath Road, Near Kapila Nursing Home Palampur, Tehsil & P.O. Palampur, Distt. Kangra, H.P. ..Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh Gaurav Pathania, Adv. For the Respondent(s)
 : Sh. N.L. Kaundal, AR
 : Sh. Vijay Kaundal, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Sh. Om Parkash s/o Shri Dhanu Ram, Village Kanarthu, P.O. Phtahar, Tehsil Baijnath, Distt. Kangra, H.P. by (i) The Chairman-*cum*-Managing Director, Sahayta Security Services Pvt. Ltd., Hospital Road Mandi, Distt. Mandi, H.P. (ii) The Director, Sahayta Security Services Pvt. Ltd. Baijnath Road, Near Kapila Nursinig Home Palampur, Tehsil & P.O. Palampur, Distt. Kangra *w.e.f.* 31-7-2012 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what benefits, including reinstatement, amount of back wages, salary, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition reveal that petitioner above-named had been engaged on 9-11-2009 as Security Guard (gunman) by the respondents on a monthly salary of Rs. 4600/- where petitioner continued to work till 31-7-2012 when his service was illegally terminated by respondents. It transpires from claim petition that petitioner had performed his duties to the best of sincerity and upto the satisfaction of his superior but without any rhyme or reason, petitioner had been illegally disengaged by respondents. It is alleged that demand notice was served by petitioner to respondent in pursuance to which matter was taken before Labour Inspector-*cum*-Conciliation Officer, Palampur but the conciliation could not be effected inter-se parties. It is alleged that respondents while terminating service of petitioner had not issued any show cause notice or notice for termination raising charge sheet alternatively payment of wages of one month in lieu thereof and thus respondent had violated Section 25 -F of the Industrial Disputes Act, 1947 (hereinafter called ‘Act’ for brevity). It is further alleged that respondents while terminating service of petitioner had not followed principle of ‘Last come First go’ envisaged under Section 25-G of Act as juniors to petitioner had been retained and at the same time, while engaging fresh hands, no notice was ever given to petitioner calling upon him to join duty and thereby violated Section 25-H of Act. It is further alleged that petitioner was still ready and willing to serve and join respondents as he was the only bread earner of his family dependant upon him. Accordingly, petitioner prays that respondents be directed to re-engage him as Security Guard (Gunman) besides intervening period from his disengagement till re-engagement consequent upon grant of relief from this court may be ordered to be treated as being on duty period for the purposes of continuity and seniority and back wages besides to any other relief petitioner is found entitled.

4. The respondents contested claim petition, filed reply *inter-alia* taken preliminary objections *qua* jurisdiction, maintainability, estoppel respondent being authorized by H.P. Govt. to provide security services subject to conditions which had not been complied or

fulfilled by petitioner had not come to the court with clean hands. On merits admitted that petitioner had been engaged by respondents on monthly salary of Rs. 6,200/- per month however asserted that petitioner had worked for different clients on pool basis under different contracts arrived in between the respondents and different clients during the period petitioner served. It is alleged that at the time of engagement, petitioner had filled up application form and all the terms and conditions of employment were settled by respondents who had signed and accepted the conditions of appointment order as correct which are now binding on petitioner. It is emphatically denied that service of petitioner had ever been terminated by respondents rather petitioner was transferred to join at another location where he did not join although as per Clause 6 of terms and conditions of his employment, petitioner was to join to new place of posting to which he refused and did not report for duty and thus respondents had not terminated service of petitioner but petitioner himself had abandoned the job and engaged another workmen as per his convenience. It is also contended that respondents were ready to engage petitioner if he was willing to join service although subject to availability of vacancy. Admitted that consequent upon serving demand notice by petitioner conciliation proceedings took place before Labour Inspector-cum-Conciliation Officer which failed and consequently failure report was sent followed by reference to this court. Thus, reiterating their stand jointly respondents have asserted that petitioner had abandoned the job and thus there was no requirement of issuance of notice or payment of compensation envisaged under Section 25-F of Act. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18, Rule 4 CPC, the petitioner has examined Shri Mohinder Singh and Sh. Bakshi Ram Rana as PW2 and PW3 respectively, copy of demand notice Ex. PW1/B, copy of bill dated 1-9-2011 Ex. PW1/C, copy of I.D. Card Ex. PW1/D, copy of Arm Licence Ex. PW1/E, submissions of record as sought by petitioner Ex. PW3/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondents examined RW1 Shri B.R. Rana, Director Sahayta Security Services Ltd. as RW1 tendered/proved affidavit Ex. RW1/A copy of license Ex. RW1/B, copy of notification dated 28-6-2011 Ex. RW1/C, copy of application form Ex. R-1, copy of reply to demand notice Ex. R-2 and closed the evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. A.R. representing respondents, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 21-4-2015 for determination which are as under:—

- (1) Whether termination of the services of the petitioner by the respondents *w.e.f.* 31-7-2012 is/was improper and unjustified as alleged? *..OPP.*
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? *..OPP.*
- (3) Whether the petitioner has abandoned the job on his own as alleged. If so, its effect? *..OPR.*
- (4) Whether the petition is not maintainable in the present form as alleged? *..OPR.*

(5) Whether the petitioner has not come to the court with clean hands as alleged?
..OPR.

(6) Whether the claim petition is bad on account of act and conduct as alleged?
..OPR.

(7) Relief

9. It is pertinent to mention here that *vide* order dated 01-5-2014 of my Ld. predecessor *ex parte* decree was set aside and case was registered at its old number.

10. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	: Yes
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: No
Issue No. 5	: No
Issue No. 6	: No
Relief.	: Petition is partly allowed in favour of petitioner per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 to 3 & 6:

11. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. Relationship of petitioner having been engaged as Security Guard (Gunman) by respondents is not in dispute. It is also not in dispute that petitioner had worked with respondents from 9-11-2009 to 31-7-2012. It is admitted case of parties that petitioner had been appointed on submitting application Ex. R1 on which signature of petitioner existed accepting terms and conditions of employment as Security Guard (Gunman) with the respondents. The case of the petitioner remains that he has been illegally terminated by respondents while working as Security Guard (Gunman) whereas the plea of respondents remains that they did not terminate service of petitioner rather petitioner of his own accord abandoned the job and did not resume duty. In the backdrop of foregoing admitted facts, it needs to be determined if service of petitioner had been illegally terminated by respondents in violation of Section 25-F of Act.

13. Stepping into witness box as PW1 petitioner has tendered and proved his affidavit Ex. PW1/A deposed on oath as maintained in claim petition which proves that petitioner had been engaged by respondents on 9-11-2009. The fact that petitioner remained engaged till 31-7-2012 is also not in dispute as can also be gathered from testimony on oath of RW1 Shri B.R. Rana, Director Sahayta Security Services Ltd. The sole controversy which falls for adjudication is if petitioner was terminated orally by respondents as claimed or that petitioner had abandoned the job who did not resume duty despite intimation by respondents. To appreciate evidence led by parties in support of their rival contentions, it would be pertinent to go through the cross-examination of RW1, the sole witness on behalf of respondents in which he has admitted that petitioner had remained engaged from 9-11-2009

upto 31-7-2012 as Security Guard (Gunman) which clearly establishes that petitioner had worked for more than 240 days in preceding 12 months from date of termination *i.e.* on 31-7-2012 irrespective of the fact that mandays on record had not been proved by either parties however in view of specific admission of RW1 to this effect, this court is left with no option but hold that petitioner had worked for 240 days with respondent as stated above. It is admittedly not the case of respondents that any notice under Section 25-F of Act was issued by respondents before terminating his service as plea of respondents remained that petitioner had abandoned the job. RW1 has shown his inability to tell if any notice was given to petitioner when he abandoned the job. Be it noticed being sole witness on behalf of respondents. RW1 was required to deny fact of termination *moreso* when it remains plea of respondents that petitioner had abandoned the job as he did not report for duty. RW1 has further admitted that petitioner had issued demand notice Ex. R1 raising industrial dispute however stated of his own that respondent's company had filed reply as Ex. R2. On the other hand, nothing in cross-examination of petitioner as PW1 could be elicited by Ld. A.R. for respondents by which it could be established that petitioner had not factually worked for 240 days irrespective of that PW1 has admitted that he had not been posted at one place in 240 days and this aspect was clarified by PW1 of his own by stating that at the instance of respondents, petitioner was made to work at different places although payments of wages were being made by respondents which necessarily follows that the relationship of workman and employer existed between the parties. In any case, petitioner continued to be employee of respondents till he was disengaged who were paying petitioner salary every month. He has further clarified that petitioner was assigned work according to requirement/demand of work which shows that petitioner like other security guard had been engaged by respondents who provided manpower to various clients/company.

14. Ex. R1 is the application form for employment which had been filled by the petitioner upon which thumb mark/finger prints existed besides signature. This document further shows that there were 16 conditions of post employment which petitioner had accepted at the time of joining service. It is revealed from condition No.7 that **petitioner could be posted anywhere in India**. Referring to this condition and cross-examination of PW1 in which **petitioner has specifically admitted that he was ready to work at any place wherever vacancy existed** clearly establish that petitioner could be asked by respondents to serve anywhere in India. As such, petitioner in cross-examination has not disputed the conditions of employment besides expressed his willingness to work anywhere he would be deputed by respondents. In cross-examination of RW1, Ld. Counsel for the petitioner has not asked any question regarding transfer of petitioner to another place when petitioner left the job or terminated as claimed by the petitioner which goes to show that on being deputed to place which was not convenient for the petitioner, he did not join duty. Even in demand notice nothing has been stipulated about transfer of petitioner to another place rather in demand notice only aspect of illegal termination on 31-7-2012 by respondent has been asserted. Ex. R2 is the reply filed by the respondents which revealed that respondents did not terminate petitioner's service rather he was asked to be present at another duty post/location to which petitioner refused to go. Falsity of plea so raised by respondents gets surfaced as was not specifically mentioned at which place of posting petitioner did not join and thereby abandoned the job which manifestly belie stand so taken by respondents.

15. In order to prove of plea of abandonment, respondents were required to establish that consequent upon abandoning the job, they had issued notice calling upon petitioner to join or resume duty but in its evidence respondents have not stated so that they had even issued any notice calling upon petitioner to join instead they presumed or say inferred that since petitioner had not been recruited for new place of posting he abandoned the job. It has

rightly been contended by Ld. Counsel for the petitioner that intention to abandon the job has to be gathered from circumstances of the case but at the same time respondents were not absolved from their accountability to have resorted to lawful procedure when employee/workman did not report for duty.

16. Ld. Authorized Representative for respondents has placed reliance upon the judgment of Hon'ble Apex Court titled as **G.T. Lad and ors. vs. Chemicals and Fibres India Ltd.** reported in **AIR 1979 SC 582**. Relying upon the judgment aforesaid, it has been contended by Ld. Counsel for petitioner that intention to abandon the job could not be inferred merely from the fact that petitioner had not joined at any new place which has although not been disclosed in pleadings and proved in evidence by respondents as such bald plea of respondents that petitioner had not join at new place of posting/location appears to be afterthought and an excuse to remove petitioner from service. It was necessary for respondents to have revealed new place of posting where petitioner refused to join. As such, the plea of abandonment raised by respondents merits rejection for the reasons stated hereinabove. Even otherwise also if petitioner was absenting unauthorizedly from duty respondents were required to issue show cause notice or hold inquiry raising charge-sheet and having failed to do so, petitioner is held to be illegally terminated. As has come in the evidence that petitioner was not issued any notice or paid wages in lieu of notice period envisaged under Section 25-F of Act and that petitioner had worked for more than 240 days, it is held that petitioner had worked for 240 days in preceding 12 months besides that respondents had violated provisions of Section 25-F of Act and therefore termination of petitioner is held to be illegal and thus relief of reinstatement and other consequential benefits as claimed by petitioner are liable to be given to him.

17. In so far plea of back wages ever since termination of petitioner is concerned, it would be relevant to refer to cross-examination of petitioner in which he has admitted that he had cultivable land and also had earned livelihood as a labourer and thus, it cannot be stated that petitioner was not gainfully employed ever since termination of his service on 31-7-2012 by respondents. Ld. D.A. for respondent has relied upon judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same**'. As such, when petitioner was gainfully employed after his termination he would not be entitled for back wages although for all other consequential benefits, seniority and continuity in service. Issue No. 1 is decided in affirmative whereas issue No. 3 is answered in negative and issue No. 2 is decided as discussed. For the reasons stipulated in the foregoing paras claim petition could not be stated to be bad on account of act and conduct as petitioner had been illegally terminated by respondents who had not abandoned the job and therefore it cannot be stated that due to his act and conduct claim is bad and thus petitioner is not entitled to relief of reinstatement as sought for along-with consequential benefits. Issue No. 6 is decided in negative in favour of petitioner and against the respondents.

Issue No. 4:

18. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Authorized Representative representing respondents has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea *qua* non maintainability merits rejection outright. Otherwise also, from pleadings and evidence on

record, no inference of claim petition being not maintainable could be raised against claimant/petitioner moreso when there are specific findings in foregoing paras that service of petitioner had been illegally terminated. This issue is decided in favour of petitioner and against the respondent.

Issue No. 5:

19. This issue was not pressed by the Ld. Authorized Representative for the respondents at the time of arguments as such issue No. 5 is decided as unpressed in favour of petitioner and against the respondents.

Relief:

20. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. Accordingly, the respondents are hereby directed to re-engage the petitioner forthwith who shall be entitled to seniority and continuity in service **except back wages** however respondents are further directed to pay Rs.10,000/- to the petitioner as litigation costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 7th day of December, 2018.

Sd/-
(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 122/2013
Date of Institution : 20-8-2013
Date of Decision : 07-12-2018

Shri Roshan Lal s/o late Shri Mangat Ram, r/o Village Malghota, P.O. Kharanal, Tehsil Baijnath, Distt. Kangra, H.P. ..Petitioner.

Versus

1. The Chairman-cum-Managing Director, Sahayta Security Services Pvt. Ltd., Hospital Road Mandi, Distt. Mandi, H.P.

2. The Director, Sahayta Security Services Pvt. Ltd. Baijnath Road, Near Kapila Nursing Home Palampur, Tehsil & P.O. Palampur, Distt. Kangra, H.P. ..Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh Gaurav Pathania, Adv.
 For the Respondent(s) : Sh. N.L. Kaundal, AR
 : Sh. Vijay Kaundal, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Sh. Roshan Lal s/o Late Sh. Mangat Ram, Village Malghota, P.O. Kharanal, Tehsil Baijnath, Distt. Kangra, H.P. by (i) The Chairman-*cum*-Managing Director, Sahayta Security Services Pvt. Ltd., Hospital Road Mandi, Distt. Mandi, H.P. (ii) The Director, Sahayta Security Services Pvt. Ltd., Baijnath Road, Near Kapila Nursing Home Palampur, Tehsil & P.O. Palampur, Distt. Kangra *w.e.f.* 23-3-2012 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what benefits, including reinstatement, amount of back wages, salary, seniority, past service benefits and compensation the above worker is entitled to from the above employers?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition reveal that petitioner above-named had been engaged on 1-8-2008 as Security Guard (gunman) by the respondents on a monthly salary of Rs. 6,200/- where petitioner continued to work till 23-3-2012 when his service was illegally terminated by respondents. It transpires from claim petition that petitioner had performed his duties to the best of sincerity and upto the satisfaction of his superior but without any rhyme or reason, petitioner had been illegally disengaged by respondents. It is alleged that demand notice was served by petitioner to respondent in pursuance to which matter was taken before Labour Inspector-*cum*-Conciliation Officer, Palampur but the conciliation could not be effected *inter-se* parties. It is alleged that respondents while terminating service of petitioner had not issued any show cause notice or notice for termination raising charge sheet alternatively payment of wages of one month in lieu thereof and thus respondent had violated Section 25 -F of the Industrial Disputes Act, 1947 (hereinafter called ‘Act’ for brevity). It is further alleged that respondents while terminating service of petitioner had not followed principle of ‘Last come First go’ envisaged under Section 25-G of Act as juniors to petitioner had been retained and at the same time, while engaging fresh hands, no notice was ever given to petitioner calling upon him to join duty and thereby violated Section 25-H of Act. It is further alleged that petitioner was still ready and willing to serve and join respondents as he was the only bread earner of his family dependant upon him. Accordingly, petitioner prays that respondents be directed to re-engage him as Security Guard (Gunman) besides intervening period from his disengagement till re-engagement consequent upon grant of relief from this court may be ordered to be treated as being on duty period for the purposes of continuity and seniority and back wages besides to any other relief petitioner is found entitled.

4. The respondents contested claim petition, filed reply *inter-alia* taken preliminary objections *qua* jurisdiction, maintainability, estoppel respondent being authorized by HP Govt. to provide security services subject to conditions which had not been complied or fulfilled by petitioner had not come to the court with clean hands. On merits admitted that

petitioner had been engaged by respondents on monthly salary of Rs. 6,200/- per month however asserted that petitioner had worked for different clients on pool basis under different contracts arrived in between the respondents and different clients during the period petitioner served. It is alleged that at the time of engagement, petitioner had filled up application form and all the terms and conditions of employment were settled by respondents who had signed and accepted the conditions of appointment order as correct which are now binding on petitioner. It is emphatically denied that service of petitioner had ever been terminated by respondents rather petitioner was transferred to join at another location where he did not join although as per Clause 6 of terms and conditions of his employment, petitioner was to join to new place of posting to which he refused and did not report for duty and thus respondents had not terminated service of petitioner but petitioner himself had abandoned the job and engaged another workmen as per his convenience. It is also contended that respondents were ready to engage petitioner if he was willing to join service although subject to availability of vacancy. Admitted that consequent upon serving demand notice by petitioner conciliation proceedings took place before Labour Inspector-*cum*-Conciliation Officer which failed and consequently failure report was sent followed by reference to this court. Thus, reiterating their stand jointly respondents have asserted that petitioner had abandoned the job and thus there was no requirement of issuance of notice or payment of compensation envisaged under Section 25-F of Act. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18, Rule 4 CPC, the petitioner has examined Shri Mohinder Singh and Sh. Bakshi Ram Rana as PW2 and PW3 respectively, copy of demand notice Ex. PW1/B, copy of bill dated 1-9-2011 Ex. PW1/C, copy of I.D. Card Ex. PW1/D, copy of Arm Licence Ex. PW1/E, submissions of record as sought by petitioner Ex. PW3/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondents examined RW1 Shri B.R. Rana, Director Sahayta Security Services Ltd. as RW1 tendered/proved affidavit Ex. RW1/A copy of license Ex. RW1/B, copy of notification dated 28-6-2011 Ex. RW1/C, copy of application form Ex. R-1, copy of reply to demand notice Ex. R- 2 and closed the evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. A.R. representing respondents, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 21-4-2015 for determination which are as under:—

- (1) Whether termination of the services of the petitioner by the respondents *w.e.f.* 23-3-2012 is/was improper and unjustified as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the petitioner has abandoned the job on his own as alleged. If so, its effect? ..*OPR.*
- (4) Whether the petition is not maintainable in the present form as alleged? ..*OPR.*

(5) Whether the petitioner has not come to the court with clean hands as alleged?

..OPR.

(6) Whether the claim petition is bad on account of act and conduct as alleged?

..OPR.

(7) Relief

9. It is pertinent to mention here that *vide* order dated 01-5-2014 of my Ld. predecessor *ex parte* decree was set aside and case was registered at its old number.

10. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1	: Yes
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: No
Issue No. 5	: No
Issue No. 6	: No
Relief	: Petition is partly allowed in favour of petitioner per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 to 3 & 6:

11. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. Relationship of petitioner having been engaged as Security Guard (Gunman) by respondents is not in dispute. It is also not in dispute that petitioner had worked with respondents from 1-8-2008 to 23-3-2012. It is admitted case of parties that petitioner had been appointed on submitting application Ex. R1 on which signature of petitioner existed accepting terms and conditions of employment as Security Guard (Gunman) with the respondents. The case of the petitioner remains that he has been illegally terminated by respondents while working as Security Guard (Gunman) whereas the plea of respondents remains that they did not terminate service of petitioner rather petitioner of his own accord abandoned the job and did not resume duty. In the backdrop of foregoing admitted facts, it needs to be determined if service of petitioner had been illegally terminated by respondents in violation of Section 25-F of Act.

13. Stepping into witness box as PW1 petitioner has tendered and proved his affidavit Ex. PW1/A deposed on oath as maintained in claim petition which proves that petitioner had been engaged by respondents on 1-8-2008. The fact that petitioner remained engaged till 23-3-2012 is also not in dispute as can also be gathered from testimony on oath of RW1 Shri B.R. Rana, Director Sahayta Security Services Ltd. The sole controversy which falls for adjudication is if petitioner was terminated orally by respondents as claimed or that petitioner had abandoned the job who did not resume duty despite intimation by respondents. To appreciate evidence led by parties in support of their rival contentions, it would be pertinent to go through the cross-examination of RW1, the sole witness on behalf of respondents in which he has admitted that petitioner had remained engaged from 1-8-2008 upto 23-3-2012

as Security Guard (Gunman) which clearly establishes that petitioner had worked for more than 240 days in preceding 12 months from date of termination *i.e.* on 23-3-2012 irrespective the fact that mandays on record had not been proved by either parties however in view of specific admission of RW1 to this effect, this court is left with no option but hold that petitioner had worked for 240 days with respondent as stated above. It is admittedly not the case of respondents that any notice under Section 25-F of Act was issued by respondents before terminating his service as plea of respondents remained that petitioner had abandoned the job. RW1 has shown his inability to tell if any notice was given to petitioner when he abandoned the job. Be it noticed being sole witness on behalf of respondents. RW1 was required to deny fact of termination *moreso* when it remains plea of respondents that petitioner had abandoned the job as he did not report for duty. RW1 has further admitted that petitioner had issued demand notice Ex. R1 raising industrial dispute however stated of his own that respondent's company had filed reply as Ex. R2. On the other hand, nothing in cross-examination of petitioner as PW1 could be elicited by Ld. A.R. for respondents by which it could be established that petitioner had not factually worked for 240 days irrespective of that PW1 has admitted that he had not been posted at one place in 240 days and this aspect was clarified by PW1 of his own by stating that at the instance of respondents, petitioner was made to work at different places although payments of wages were being made by respondents which necessarily follows that the relationship of workman and employer existed between the parties. In any case, petitioner continued to be employee of respondents till he was disengaged who were paying petitioner salary every month. He has further clarified that petitioner was assigned work according to requirement/demand of work which shows that petitioner like other security guard had been engaged by respondents who provided manpower to various clients/company.

14. Ex. R1 is the application form for employment which had been filled by the petitioner upon which thumb mark/finger prints existed besides signature. This document further shows that there were 16 conditions of post employment which petitioner had accepted at the time of joining service. It is revealed from condition No. 7 that **petitioner could be posted anywhere in India**. Referring to this condition and cross-examination of PW1 in which **petitioner has specifically admitted that he was ready to work at any place wherever vacancy existed** clearly establish that petitioner could be asked by respondent to serve anywhere in India. As such, petitioner in cross-examination has not disputed the conditions of employment besides expressed his willingness to work anywhere he would be deputed by respondents. In cross-examination of RW1, Ld. Counsel for the petitioner has not asked any question regarding transfer of petitioner to another place when petitioner left the job or terminated as claimed by the petitioner which goes to show that on being deputed to place which was not convenient for the petitioner, he did not join duty. Even in demand notice nothing has been stipulated about transfer of petitioner to another place rather in demand notice only aspect of illegal termination on 23-3-2012 by respondent has been asserted. Ex. R2 is the reply filed by the respondents which revealed that respondents did not terminate petitioner's service rather he was asked to be present at another duty post/location to which petitioner refused to go. Falsity of plea so raised by respondents gets surfaced as was not specifically mentioned at which place of posting petitioner did not join and thereby abandoned the job which manifestly belie stand so taken by respondents.

15. In order to prove of plea of abandonment, respondents were required to establish that consequent upon abandoning the job, they had issued notice calling upon petitioner to join or resume duty but in its evidence respondents have not stated so that they had even issued any notice calling upon petitioner to join instead they presumed or say inferred that since petitioner had not been recruited for new place of posting he abandoned the job. It has rightly been contended by Ld. Counsel for the petitioner that intention to abandon the job

has to be gathered from circumstances of the case but at the same time respondents were not absolved from their accountability to have resorted to lawful procedure when employee/workman did not report for duty.

16. Ld. Authorized Representative for respondents has placed reliance upon the judgment of Hon'ble Apex Court titled as **G.T. Lad and ors. vs. Chemicals and Fibres India Ltd.** reported in **AIR 1979 SC 582**. Relying upon the judgment aforesaid, it has been contended by Ld. Counsel for petitioner that intention to abandon the job could not be inferred merely from the fact that petitioner had not joined at any new place which has although not been disclosed in pleadings and proved in evidence by respondents as such bald plea of respondents that petitioner had not join at new place of posting/location appears to be afterthought and an excuse to remove petitioner from service. It was necessary for respondents to have revealed new place of posting where petitioner refused to join. As such, the plea of abandonment raised by respondents merits rejection for the reasons stated hereinabove. Even otherwise also if petitioner was absenting unauthorizedly from duty respondents were required to issue show cause notice or hold inquiry raising charge-sheet and having failed to do so, petitioner is held to be illegally terminated. As has come in the evidence that petitioner was not issued any notice or paid wages in lieu of notice period envisaged under Section 25-F of Act and that petitioner had worked for more than 240 days, it is held that petitioner had worked for 240 days in preceding 12 months besides that respondents had violated provisions of Section 25-F of Act and therefore termination of petitioner is held to be illegal and thus relief of reinstatement and other consequential benefits as claimed by petitioner are liable to be given to him.

17. In so far plea of back wages ever since termination of petitioner is concerned, it would be relevant to refer to cross-examination of petitioner in which he has admitted that he had cultivable land and also had earned livelihood as a labourer and thus, it cannot be stated that petitioner was not gainfully employed ever since termination of his service on 23-3-2012 by respondents. Ld. D.A. for respondent has relied upon judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. As such, when petitioner was gainfully employed after his termination he would not be entitled for back wages although for all other consequential benefits, seniority and continuity in service. Issue No.1 is decided in affirmative whereas issue No.3 is answered in negative and issue No.2 is decided as discussed. For the reasons stipulated in the foregoing paras claim petition could not be stated to be bad on account of act and conduct as petitioner had been illegally terminated by respondents who had not abandoned the job and therefore it cannot be stated that due to his act and conduct claim is bad and thus petitioner is not entitled to relief of reinstatement as sought for along-with consequential benefits. Issue No.6 is decided in negative in favour of petitioner and against the respondents.

Issue No. 4:

18. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Authorized Representative representing respondents has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea *qua* non maintainability merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against

claimant/petitioner moreso when there are specific findings in foregoing paras that service of petitioner had been illegally terminated. This issue is decided in favour of petitioner and against the respondent.

Issue No. 5:

19. This issue was not pressed by the Ld. Authorized Representative for the respondents at the time of arguments as such issue No. 5 is decided as unpressed in favour of petitioner and against the respondents.

Relief:

20. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. Accordingly, the respondents are hereby directed to re-engage the petitioner forthwith who shall be entitled to seniority and continuity in service **except back wages** however respondents are further directed to pay Rs.10,000/- to the petitioner as litigation costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 7th day of December, 2018.

Sd/-
(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No.	: 119/2013
Date of Institution	: 20-8-2013
Date of Decision	: 07-12-2018

Shri Kuldeep Kumar s/o Shri Om Parkash, r/o V.P.O. Lahla, Tehsil Palampur, Distt. Kangra, H.P., Through Legal heirs Smt. Anjna Kumari wd/o deceased Kuldeep Singh.
..Petitioner.

Versus

1. The Chairman-cum-Managing Director, Sahayta Security Services Pvt. Ltd., Hospital Road Mandi, Distt. Mandi, H.P.

2. The Director, Sahayta Security Services Pvt. Ltd. Bajinath Road, Near Kapila Nursing Home Palampur, Tehsil & P.O. Palampur, Distt. Kangra, H.P.
..Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Sh Gaurav Pathania, Adv.
For the Respondent(s)	: Sh. N.L. Kaundal, AR
	: Sh. Vijay Kaundal, Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Sh. Kuldeep Kumar s/o Sh. Om Parkash, V.P.O. Lahla, Tehsil Palampur, Distt. Kangra, H.P. by (i) The Chairman-cum-Managing Director, Sahayta Security Services Pvt. Ltd., Hospital Road Mandi, Distt. Mandi, H.P. (ii) The Director, Sahayta Security Services Pvt. Ltd. Baijnath Road, Near Kapila Nursing Home Palampur, Tehsil & P.O. Palampur, Distt. Kangra *w.e.f.* 01-8-2012 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what benefits, including reinstatement, amount of back wages, salary, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner Kuldeep Kumar (since deceased) had been engaged as Security Guard by respondents on 10-4-2009 on monthly wages of Rs. 4,600/- who continued to work till 1-8-2012 when his service was illegally terminated by the respondents without any reasonable cause. It transpires from the claim petition that deceased petitioner had been working for 12 hours in a day on duty at the instance of respondents which he performed sincerely and to the entire satisfaction of superiors. Averments made in the claim petition further revealed that service of petitioner had been illegally terminated on 1-8-2012 without serving any notice/or charge-sheet and at the same time, one months pay in lieu of notice period and retrenchment compensation was not paid to him. Not only this, workers junior to petitioner were retained in service and thus respondents while terminating service of petitioner did not recourse to procedure envisaged under Section 25-G of Act which requires doctrine of ‘Last come First go’ to be followed in the manner termination/retrenchment of service. Aggrieved with action of the respondent demand notice was served by petitioner upon respondents but the same yielded not fruitful result. Accordingly, it is alleged that the act of respondents in terminating service of petitioner was illegal and unjustified and thus respondents had violated Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter called ‘the Act’ for brevity). Accordingly petitioner prays for reinstatement of service with all consequential benefits with full back wages.

4. The respondents contested claim petition, filed reply *inter-alia* taken preliminary objections of jurisdiction, respondent being authorized by HP Govt. to provide security services subject to conditions which had not been complied by petitioner, maintainability, petitioner having not come to the court with clean hands and estopped to claim relief by his act and conduct. On merits admitted that petitioner had been engaged on 10-4-2009 by respondents on salary of Rs. 4,600/- per month besides asserted that petitioner had worked for different clients on pool basis under different contracts arrived in between the respondents and different clients during the period he served. It is alleged that at the time of engagement,

petitioner had filled up application form and all the terms and conditions of employment were settled by respondents who had signed and accepted the conditions of appointment order as correct which are now binding on petitioner. It is emphatically denied that service of petitioner had been terminated by respondents rather petitioner was transferred to join at another location where he did not join although as per clause 6 of terms and conditions of his employment, petitioner was to join to which he refused and abandoned the job and thus respondents had not terminated service of petitioner but he himself abandoned the job and thereafter engaged another workmen as per his convenience. It is also contended that respondents were ready to engage petitioner if he was willing to join service although subject to availability of vacancy. Admitted that consequent upon serving demand notice, conciliation took place before Labour Inspector-*cum*-Conciliation Officer which failed and consequently failure report was sent under Section 12(4) of Act followed by reference by appropriate govt. to this court. Thus reiterating their stand respondents have asserted that petitioner had abandoned the job therefore requirement of issuance of notice or payment of compensation envisaged under Section 25 -F of Act did not arise. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. It is pertinent to mention here that notices were issued to both the respondents who appeared and contested the claim petition filed joint reply. It may be pertinent to mention here that initially when the case was listed for hearing before this court on 7-9-2013 both the respondents did not appear before this court due to which they were proceeded against *ex parte* and petitioner was allowed to lead *ex parte* evidence in which petitioner examined himself as PW1, tendered/proved his affidavit and closed evidence and further examined PW2 Shri Madan Lal and on the basis of *ex parte* evidence led by petitioner, my *Id.* predecessor passed *ex parte* award holding that termination of petitioner was illegal as the petitioner had continuously worked from 10-4-2009 to 1-8-2012 termination of petitioner by respondents was in violation of Section 25-F and 25-G of the Act. Thereafter, passing of Award, respondents again appeared through counsel, moved application for setting aside *ex parte* award dated 2-12-2013 passed in the present reference No.119/2013 which was allowed on 1-5-2014 by my *Id.* predecessor and the case was again registered at its old number after setting aside of *ex parte* award, the case further proceeded and during pendency of claim petition claimant/petitioner had died and his legal heirs moved application under Order 22 Rules 3 and 9 of CPC read with Section 151 CPC which was allowed and accordingly legal heirs of deceased claimant/petitioner namely Smt. Anjna Kumari (widow), Rocky and Muskan son and daughter respectively of deceased Kuldeep Kumar were impleaded as party to the case. Since Smt. Anjana Kumari wd/o deceased Kuldeep Kumar and mother of minor children namely Rocky and Muskan she was allowed to pursue claim petition after death of claimant. The conciliation was where-after tried before this court so that the dispute between legal heir of deceased and respondents could be resolved but failed. To prove claim against respondents one of legal heirs of deceased petitioner Smt. Anjna Kumari has appeared in witness box as PW1, tendered/proved her affidavit Ex. PW1/A further examined (PW2) Shri Madan Lal, tendered/proved his affidavit Ex. PW2/A, copy of death certificate Ex. PW1/B, copy of Nakal Parivar Register Mark-A, copy of I.D. Card of petitioner Mark-B, copy of licence Mark-C, copy of licence Mark-D, copy of demand notice Ex. P1 issued by deceased claimant to respondents and closed evidence. On the other hand, repudiating evidence led by petitioner, respondent had examined Shri B.R. Rana, Director Sahayta Security Services Pvt. Ltd. Baijnath, Kangra, H.P. as RW1, tendered/proved his affidavit Ex. RW1/A, copy of licence Ex. RW1/B, copy of

notification dated 28-6-2011 Ex. RW1/C, copy of application form for employment Ex. RW1/D, copy of reply to the demand notice Ex. RW1/E and closed evidence.

7. I have heard the Ld. Counsel of petitioner and ld. A.R. representing respondents, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 21-4-2015 for determination which are as under:—

- (1) Whether termination of the services of the petitioner by the respondents *w.e.f.* 01-8-2012 is/was improper and unjustified as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the petitioner has abandoned the job on his own as alleged. If so, its effect? ..*OPR.*
- (4) Whether the petition is not maintainable in the present form as alleged? ..*OPR.*
- (5) Whether the petitioner has not come to the court with clean hands as alleged? ..*OPR.*
- (6) Whether the claim petition is bad on account of act and conduct as alleged? ..*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1	: Discussed
Issue No. 2	: Discussed
Issue No. 3	: Discussed
Issue No. 4	: No
Issue No. 5	: No
Issue No. 6	: No
Relief.	: Petition is partly allowed awarding lump-sum compensation of Rs.1,00,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 and 2:

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of Kuldeep Kumar (since deceased) working with respondents as Security Guard is not in dispute. It is also not in dispute that deceased remained engaged with respondents during his life time from 10-4-2009 to 1-8-2012. It is also not in dispute that deceased Kuldeep Kumar had died during the pendency present reference and that earlier an exparte Award dated 2-12-2013 was also passed *vide* which respondents

were directed to reinstate deceased petitioner with full back wages and all consequential benefits. In the backdrop of foregoing facts claim of legal heirs of deceased petitioner namely Anjna Kumari, Rocky and Muskan who are widow, son and daughter is to be adjudicated.

12. Ld. Counsel for the petitioner has frankly conceded at the time of arguments that upon death of original claimant/petitioner his legal heirs who are wife and minor children would not be entitled for relief of reinstatement instead of they can awarded compensation. PW1 Anjna Kumari has stepped into witness box tendered proved Ex. PW1/A deposed on oath that her husband had been engaged as Security Guard and was illegally terminated on 1-8-2012. She has also stated that no notice was served upon deceased Kuldeep Kumar during his life time when his service was terminated and even while terminating service junior to deceased Kuldeep Kumar were retained. In her affidavit (PW1) petitioner has also maintained that after termination from service of her husband used to remain at home after termination and cultivated land besides rearing cattle who died on 18-1-2015. She has further stated that she was not employed anywhere and looking domestic affairs only. Nothing in cross-examination of petitioner could be elicited which would establish that respondents had terminated service of deceased petitioner Kuldeep Kumar after following needful procedure envisaged under Section 25 - F or 25-G of the Act. Since period in which deceased petitioner had remained engaged as Security Guard had not been controverted by respondents in their joint reply, the same necessarily follows that petitioner immediately prior to his termination in preceding 12 months had worked for 240 days and was thus illegally terminated. Evidently, there existed nothing record to establish that respondent had issued any show cause notice at the time of termination or pay compensation. RW1 Shri B.R. Rana representing respondents has given evasive reply by stating that he did not know if any notice had been issued to petitioner when petitioner was terminated which necessarily follows that respondents had terminated service of deceased Kuldeep Kumar and as such plea of abandonment of job by deceased Kuldeep Kumar. He even shown ignorance on point of being given any notice while terminating petitioner. Although, RW1 has specifically admitted that demand notice Ex P1 was given and the same was replied by respondents *vide* Ex. RW1/E in which respondents have also admitted entire period for which the deceased had worked. As such, having not given any notice of termination or paying any compensation, respondents had certainly violated provisions of Section 25-F of the Act.

13. In so far as violation of Section 25-H of the Act is concerned, there is nothing authenticated in evidence suggesting that any person junior to deceased petitioner had been retained and service of deceased petitioner was terminated. Reliance has been placed on testimony of PW2 Shri Mohinder Singh who too worked as gunman with the respondents and worked till 2-12-2013. From statement of PW2 no inference of retention of any junior security guard or any other co-workmen while deceased petitioner was alive during his service could be drawn. Moreover, no seniority list of Security Guard, has been proved by claimant/petitioner. In such like situation, it would be unsafe to hold that respondents had violated provisions of Section 25-G of the Act.

14. Since termination of deceased petitioner was in violation of Section 25-F of the Act and the said Kuldeep Kumar (since deceased) had worked for more than three years and was illegally terminated by respondents as stated above besides deceased petitioner was about 45 years when examined for the first time on 18-11-2013 before this court in pursuance to which *ex parte* award dated 2-12-2013 was passed against respondents had died after two years when his legal heirs namely Smt. Anjana Kumari widow was brought on record along-with minor children of deceased meaning thereby at the time of his death during claim petition was about 47 years who had sufficient service span which could have yielded sufficient income for him and his family if his death had not taken place untimely. It is

also not been disputed before me that petitioner was good worker who rendered service sincerely to the respondents and earning for livelihood for himself and family. As per evidence on record minor Rocky was born on 2-12-1998 whereas Muskan was born on 1-6-2001 who are below 18 years when their father Kuldeep Kumar died and were totally dependent upon his income.

15. In order to prove plea of abandonment, respondents were required to establish that consequent upon abandoning the job, they had issued notice calling upon petitioner to join or resume duty but in its evidence respondents have not stated so that they had even issued any notice calling upon petitioner to join instead the inference that since deceased Kuldeep Kumar original claimant had not joined at new place of posting cannot be drawn in favour of respondents as new place of posting of deceased petitioner was not at all disclosed who could not be stated to have abandoned the job. It has rightly been contended by Ld. Counsel for the petitioner that intention to abandon the job has to be gathered from circumstances of the case relying upon judgment of Hon'ble Supreme Court reported in **AIR 1979 SC 582** titled as **G.T. Lad & Ors. vs. Chemicals and Fibres India Ltd.** but at the same time respondents were not absolved from their accountability to have resorted to lawful procedure when said Kuldeep Kumar did not report for duty. Accordingly, plea of abandonment as claimed by respondents is not established. Thus, having gone through oral as well as documentary evidence as highlighted above, I deem made proper that legal heirs of deceased petitioner Kuldeep Kumar through Smt. Anjna Kumari one of legal heir of deceased Kuldeep Kumar are awarded lump sum compensation of Rs.1,00,000/-. It is however clarified that compensation grant so awarded shall be received by legal heirs through Smt. Anjna Kumari for herself and her minor children Rocky and Muskan. Issues No.1 to 3 are decided as discussed above.

Issue No. 4:

16. Ld. Authorized Representative for respondents has contended with vehemence that claim petition is not maintainable against the respondents by legal heirs of deceased petitioner. In support of his contention he has submitted that petitioner could not be given any relief including that of re-employment but it has been held in foregoing paras that deceased petitioner was illegally terminated during his life time by the respondents in violation of provisions of Section 25-F of Act. The appropriate relief which could have been granted to deceased petitioner when alive could be re-instatement back with wages, seniority and continuity in service. That being so, at this stage instead of giving relief to legal heirs of deceased petitioner of re-instatement and other consequential relief, the lump sum compensation can be notionally to legal heirs of deceased petitioner. As such, upon death of Kuldeep Kumar original claim/petition cannot be stated to be not maintainable as being the legal heirs of deceased petitioner which has not been disputed by the respondents cause action which originally existed in favour of deceased would be with the legal heirs of deceased Kuldeep Kumar who are entitled for relief of compensation as stated above. Issue No. 4 is answered in negative against respondents and in favour of petitioner.

Issues No. 5 & 6:

17. These issues were not pressed by the Ld. A.R. for the respondents and these issues are decided as unpressed in favour of petitioner and against the respondents.

Relief:

18. As sequel to my findings on foregoing issues claim petition is partly allowed granting lump sum compensation of Rs.1,00,000/- to legal heirs of deceased and

respondents are accordingly directed to pay compensation of Rs.1,00,000/- (Rupees one lakh only) to the legal heirs of deceased petitioner Kuldeep Kumar in lieu of reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by respondents to Smt. Anjana Kumari widow of deceased Kuldeep Kumar for herself and her minor children namely Rocky and Muskan within four months from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 7th day of December, 2018.

Sd/-
(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.
(Camp at Chamba)**

Ref: No. 65/17

Sh. Hari Nath s/o Sh. Sai Dass, Village Chalauli Dharwas, Tehsil Pangri, Distt. Chamba, H.P. ..Petitioner.

Versus

The Executive Engineer, Killar Division, H.P.P.W.D Killar (Pangri), Distt. Chamba, H.P. ..Respondent.

11-12-2018 Present: None for the petitioner.
Sh. Sanjeev Singh Rana, D.A. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.30 A.M. Be awaited and put up after lunch hours.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

11-12-2018 Present: None for the petitioner.
Sh. Sanjeev Singh Rana, D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.30 P.M. None appearance of petitioner or his Ld. Csl. today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:
11-12-2018

Sd/-
(K.K.SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)**

Ref No. : 347/2015
Date of Institution : 5-8-2015
Date of Decision : 11-12-2018

Shri Prem Chand s/o Late Shri Hoshiara, r/o Village Kunah, P.O. Tritha, Tehsil Dalhousie, District Chamba, H.P. *..Petitioner.*

Versus

The Principal, Sacred Heart Senior Secondary School, Dalhousie, District Chamba, H.P. *..Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. T.R. Bhardwaj, AR
For the Respondent : Sh. Akshay Jaryal, Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication:—

“Whether retirement of Shri Prem Chand s/o Late Shri Hoshiara, r/o Village Kunah, P.O. Tritha, Tehsil Dalhousie, District Chamba, H.P. *w.e.f.* 31-03-2012 before attaining the age of retirement *i.e.* 60 years (57 years five months) by the Principal, Sacred Heart Senior Secondary School, Dalhousie, District Chamba, H.P. is legal and

justified? If not, what relief of service benefits the above worker is entitled to from the above management/employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Averments made in the claim petition revealed that petitioner above named had been engaged as Gardener by respondent who joined on 1-6-1971. It is alleged that date of birth of claimant/petitioner was 18-10-1953 and a copy of birth certificate to this effect was submitted to management by petitioner at the time of joining duty. The grievance of petitioner remains that as per the record of age available with the respondent/management, the superannuation date of petitioner was to be on 31-10-2013 on attaining age of 60 years but respondent had retired petitioner from service *w.e.f.* 31-3-2012 instead of 31-10-2013 illegally under Industrial Employment (Standing Orders) Himachal Pradesh Rules, 1973 and Amendment Rules 1991 which provides age of superannuation at the age of 60 years. It is alleged that the action of respondent/management in retiring petitioner from service before completing age of 60 years is illegal, arbitrary and unjustified and that at the time of retirement, petitioner was getting monthly salary of Rs.12,942/-. It is further alleged that petitioner had resisted against illegal action of respondent/management who had engaged petitioner on honorarium basis as Gardener *w.e.f.* 6-4-2012 to 31-3-2013 on lump-sum salary of Rs.7,000/- per month whereas when retired from service, petitioner was getting much more as stated above. It further remains case of claimant/petitioner that one Daya Ram had worked as Gardener with respondent/management was shown to be born on 24-1-1949 in the service record on the basis of Nomination and Declaration Form filled by him for the purpose of EPF and Employees Pension Scheme which had been accepted by respondent/management. It is alleged that respondent/management had retired said Daya Ram from service *w.e.f.* 31-3-2009 on attaining age of 60 years and thereafter continued to work till 31-3-2012 on monthly salary of Rs.7,000/- which he was getting at the time of his retirement as was evident from letter dated 1-4-2009 issued to said Daya Ram by the respondent/management. Thus, the grievance of petitioner precisely remains that respondent in retiring petitioner at attaining age of 58 years and 5 months before attaining the age of 60 years and further continuing service till 31-3-2013 on honorarium basis on reduced salary of Rs.7,000/- per month was arbitrary illegal and unjustified as respondent/management being employer could not have resorted to two different set of rules for different employees at same post. It is further alleged that service of petitioner was finally terminated by respondent/management on 1-4-2013 by passing order simply stipulating that service of petitioner was not required by school. It is further claimed that while terminating service finally respondent/management had violated Section 25-F and 25-G of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for brevity) as the respondent/management did not serve one month notice or pay one month wages in lieu thereof period. In so far violation of Section 25-H is concerned, two persons namely Ashok Kumar and Madan Lal who were junior to petitioner had been retained whereas the service of petitioner was terminated. It is also alleged that provisions of Section 25 -H of the Act were also not complied as one Rakesh Kumar had been engaged as gardener in place of petitioner but while engaging said Rakesh Kumar no opportunity of being heard had been given to petitioner. Accordingly, petitioner alleged that respondent had committed violation of Sections 25-F, 25-G and 25-H of the Act and has thus prayed that retirement order dated 31-3-2012 passed by the respondent/management before attaining the age of 60 years be quashed and set aside and the respondent/management be directed to pay full salary to petitioner from 1-4-2012 to 31-10-2013 along-with interest @ 9% per annum and to any other relief petitioner is entitled to.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, petitioner having attained the age of superannuation which was 58 years on 31-10-2011 and that educational institution were not covered under Industrial Disputes Act, petitioner having concealed material facts. On merits submitted that petitioner had crossed the age of 58 years on 31-10-2011 as per certificate furnished by petitioner at the time of joining service and had thus attained age of superannuation but was allowed to continue with his employer till 31-3-2012 on completion of financial year of 2011-2012. It is alleged that irrespective of the fact that petitioner had attained the age of superannuation, the management committee could extend period of petitioner for two years if it was opinion that staff was fit for extension considering his service record and rules. It is denied that petitioner was getting salary of Rs.12,942/- as claimed by petitioner besides maintained that on request of petitioner consequent upon his attaining age of superannuation had himself requested for extension of time to remain his service was allowed. In so far as continuation of service of Daya Ram after his retirement age of 58 years, it is contended that on the basis of good work the management committee allowed to work considering all the circumstances of family projected before the management. It has been emphatically denied that provisions of Sections 25-F, 25-G and 25-H of Act were not adhered to by the respondent and that retiring petitioner at the age of 58 years instead of 60 years was not in any manner illegal or unjustified. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of Industrial Employment (Standing Orders) Ex. P1, copy of EPF nomination Form Mark-A, copy of letter dated 1-4-2009 Mark-B, copy of Identity Card Mark-I and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Sr. Mary Eapen, Principal Sacred Heart Sr. Secondary School, Dalhousie as RW1 tendered/proved affidavit Ex. RW1/A, copy of gratuity/compensation receipt Ex. RW1/B, copy of letter dated 1-4-2012 Ex. RW1/C, copy of service conditions/conduct rules Ex. RW1/D, copy of appointment letter of petitioner Ex. RW1/E, copy of Minutes of LMC meeting Ex. RW1/G, copy of EPF nomination form Ex. R1/Mark-A, copy of letter dated 1-4-2009 Ex. R-2/Mark-B and closed the evidence.

7. I have heard the Ld. Authorized Representative of petitioner and Ld. Counsel representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 17-2-2016 for determination which are as under:—

- (1) Whether retirement of petitioner *w.e.f.* 31-3-2012 before attaining the age of retirement *i.e.* 60 years (57 years five months) by the respondent is/was improper and unjustified as alleged? ..*OPP.*
- (2) If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the petitioner has concealed the true and material facts from the court as alleged? ..*OPR.*

(4) Whether the petitioner has not come to the court with clean hands as alleged?

..OPR.

(5) Relief

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	: No
Issue No. 2	: No
Issue No. 3	: No
Issue No. 4	: Yes
Relief.	: Petition is dismissed per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 and 2:

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Admittedly, petitioner had been engaged as Gardener by respondent who joined his duty on 1-6-1971 whose date of birth was 18-10-1953 as per the birth certificate tendered by him before the management/respondent at the time of joining duty. It is also not in dispute that petitioner had retired from service as Gardener on 31-10-2013. Evidently, on the basis of age of petitioner being 18-10-1953, date of superannuation was to be after at the age of 58 years *i.e.* in October, 2011 as the age of superannuation as per rules of respondent was 58 years. The grievance of petitioner remains that he was to retire at the age of 60 years like Daya Ram one of gardener to whom respondent/management had engaged and retired and also given extension in service for about three years. The crux of the problem which falls for adjudication in the case if petitioner was to retire in the year 2011 as stated above or on 31-10-2013 as claimed by him *i.e.* was to retire at age of 60 years as claimed by petitioner.

12. Stepping into witness as PW1, petitioner has sworn in affidavit Ex. PW1/A reiterating his stand as maintained in the claim petition. According to the petitioner, he was born on 18-10-1953 and had joined respondent on 1-6-1971 and claimed that his age of superannuation *i.e.* 60 years fell for retirement on 31-10-2013 whereas management/respondent had retired petitioner from service on 31-3-2012 illegally besides maintained that as per the Industrial Employment (Standing Orders) H.P. Rules 1973 and Amendment Rules 1991 petitioner being a workman was to retire at the age of 60 years and not at the age of 58 years. It is evident from cross-examination of petitioner that he seeks parity in age of retirement like his other co-workmen. In cross-examination, he has shown his inability to tell if in government institution or any private institution, the age of retirement was 58 years and clarified of his own that persons engaged with him had retired from service at the age of 60 years. Significantly, petitioner has admitted that while engaging him in service, no agreement was entered into between him and the management/respondent besides admitted that he has got all the dues till March, 2012 from respondent. RW1 Sister Mary Eapen has specifically stated in her affidavit Ex. RW1/A that school was registered under the Societies Registration Act, 1860 having its office at New Delhi. She has in unambiguous terms clarified that as per Article 46 of **Service Conditions and Code of Conduct** of Institute, every staff teaching as well as non-teaching shall retire from service on attaining the age of 58 years. Therefore, every staff appointed by respondent/management shall stand

disengaged on completion of superannuation *i.e.* retirement age of 58 years. Be it stated that RW1 has maintained that on attaining age of 58 years workman stands retire as per terms and condition of Service Conditions and Code of Conduct of the Institution however management committee could grant extension to work for a period of two years if in the opinion of the committee, staff was fit for extension in service. With regard to retirement of petitioner, she has clarified that petitioner was to retire on 31-10-2011 at the age of 58 years who was getting salary of Rs.12,942/- per month and on his retirement, he had received gratuity and other benefits of Rs. 2,32,956/- With regard to Daya Ram, RW1 has specifically been cross-examined by Ld. Authorized Representative for petitioner in which she has admitted that said Daya Ram had retired at the age of 60 years but clarified that he was given extension of two years meaning thereby that Daya Ram on attaining age of superannuation *i.e.* 58 years was given extension by respondent considering his service record which cannot be interpreted to mean that Daya Ram had retired at the age of 60 years. She has further admitted that Daya Ram had got extension in who was getting honorarium as reflected in Ex. R2 which is certainly not salary paid by respondent. Thus, plea of petitioner that petitioner was to treated like Daya Ram or that he was not treated like Daya Ram and thus discriminated merits rejection as Daya Ram has not retired on the age of 60 years rather he had retired at the age of 58 years and extension of two years had been given to him subject to his satisfactory work and conduct on payment of honorarium and not salary.

13. The claim of the petitioner primarily remains that age of retirement of petitioner is to be governed under Industrial Employment (Standing Orders) H.P. 1973 and Rules 1991 which has been placed on record Ex. PW1 whereas case of respondent remains that **Service Conditions and Code of Conduct** Ex. PW1/D dealt with teaching and non-teaching staff of H.P. under the Institute of **Sisters of Charity Delhi Province** applicable to petitioner, being non-teaching staff. In **Article 46** provisions *qua* retirement of teaching and non teaching staff of respondent has been stipulated which is reproduced before for reference:—

“.....Every staff shall retire from service on attaining the age of 58. The Managing Committee may grant extension for a period not exceeding **2 years** in aggregate if in the opinion of the committee, the staff is fit for such extension or has no mental or physical incapacity which would disentitle him/her to such an extension and whose service is indispensable to the institution....”

14. A bare glance on the Rule would show that every staff shall retire from service on attaining the age of 58 years however management committee could grant period of 2 years in aggregate if in the opinion of committee, the staff was found fit for extension which was primarily discretion of management/respondent. Ld. Counsel for respondent has placed reliance upon the judgment of Hon'ble High Court of Allahabad reported in **2006 LLR 595** titled as **Ram Asrey Yadav and Hindi Sahitya Sammelan Prayg v. The Presiding Officer, Labour Court Allahabad** in which Hon'ble High Court of Allahabad has specifically held that the Model Standing orders under Industrial Employment (Standing Orders) Act would not apply to an educational institution. Relying upon the above said judgment as well Ex. RW1/D Service Conditions and Code of Conduct for teaching and non teaching staff of respondent, it has been contended that petitioner could not claim retirement or superannuation at the age of 60 years rather he was to retire at the age of 58 years. Since petitioner has emphasized that he was covered under the Industrial Employment (Standing Orders) Act merit rejection as the said Act does not apply to educational institution in view of law laid down by Hon'ble High Court of Allahabad. That being so there was no error committed by the respondent in retiring petitioner at the age of 58 years *i.e.* 3-3-2012 much beyond after his age of superannuation in 31st October, 2011. The period of engagement after 31-10-2011 on monthly salary of Rs.7,000/- cannot be stated to be wrong as

petitioner himself had requested for extension of service which was accepted by the respondent/management sympathetically considering his long service with the respondent. At the cost of reiteration, it would be pertinent to mention here that Daya Ram Gardener was given two years extension *vide* Ex. RW1/F minutes of LMC meeting dated 25th March, 2007. Once it is established on record that petitioner was to retire at the age of 58 years which has so been done by respondent in accordance its rules Ex. RW1/D as stated above and that provisions of Industrial Employment (Standing Orders) did not apply in view of verdict of the Hon'ble High Court of Allahabad (*supra*), this court is left with no option but to hold that retirement of petitioner on 31-3-2012 before attaining the age of 60 years was not be stated to be illegal or unjustified as his age of superannuation was 31-10-2011.

15. In so far as violation of Section 25-F is concerned, petitioner had served with respondent for last several years and prayed for his re-engagement by extension of re-employment as stated in foregoing paras, provisions of Section 25-F did not apply on face of it and respondent was under no obligation to issue either notice or pay compensation of one month wages in lieu thereof as there was no termination or retrenchment rather petitioner had already completed age of superannuation on 31-10-2011. Thus, provisions of Section 25-F of Act was not required to be adhered by respondent. With regard to violation of Section 25-G and H of Act are concerned, this also ceases to have any bearing on the merits of the case as engagement of Rakesh Kumar as gardener after retirement of petitioner did not require issuance of further notice under Section 25- H of the Act to the petitioner as no legal right of petitioner was infringed. Similarly, while retiring petitioner on attaining the age of superannuation and retention of Ashok Kumar and Madan Lal in service did not establish that principle of 'Last come First go' envisaged under Section 25-G of the Act was not followed by respondent rather petitioner had to ultimately retire from service on attaining superannuation age on 31-10-2011 who was thereafter retained on honorarium basis till 31-3-2012 besides petitioner has not placed on record any seniority list. In view of the above discussions, issues No.1 and 2 is answered in negative against the petitioner and in favour of respondent.

Issues No. 3 and 4:

16. Both these issues being legal have been taken up together for discussion.

17. In so far as petitioner having concealed material facts is concerned, petitioner has not revealed before the court that retirement age of non-teaching staff as per rules Ex. RW1/D followed by management/respondent was 58 years and not 60 years. The petitioner has alleged that Daya Ram another gardener was retired at the age of 60 years was found to be not correct as petitioner knew that said Daya Ram was getting salary till age of 58 years and thereafter was getting fixed honorarium for two years. Thus, petitioner has concealed material facts and tried to make his case of wrongly retiring him before age of 60 years. Issue No.3 is thus answered in affirmative in favour of respondent. As stated above petitioner has concealed time and material facts, he has also not come to court with clean hands as after himself applying for extension and getting fixed honorarium of Rs.7,000/- per month although lesser than his salary in the last month *i.e.* October, 2011 had certainly not come to court with clean hands. Issue No.4 is thus answered in affirmative in favour of respondent and against petitioner.

Relief:

18. As a sequel to my findings on foregoing issues No.1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 11th day of December, 2018.

Sd/-
(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM- INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.
(Camp at Chamba)**

Ref: No. 632/16

Sh. Bhag Singh s/o Shri Tej Singh, r/o Village and Post Office Rei, Tehsil Pangi, Distt. Chamba, H.P. *..Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D Division, Killar (Pangi), Distt. Chamba, H.P. *..Respondent.*

12-12-2018 Present: None for the petitioner.
Sh. Sanjeev Singh Rana, D.A. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.30 A.M. Be awaited and put up after lunch hours.

Sd/-
(K.K.SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

12-12-2018 Present: None for the petitioner.
Sh. Sanjeev Singh Rana, D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.30 P.M. None appearance of petitioner or his ld. csl. today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate

Government for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:
12-12-2018

Sd/-
(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.
(Camp at Chamba)**

Ref: No. 401/16

Smt. Pan Dei w/o Shri Devi Singh, r/o Vill. Mahaliyat, P.O. Killar, Tehsil Pangi, Distt. Chamba, H.P. *..Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D Division, Killar (Pangi), Distt. Chamba, H.P. *..Respondent.*

12-12-2018 Present: None for the petitioner.
Sh. Sanjeev Singh Rana, D.A. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.37 A.M. Be awaited and put up after lunch hours.

Sd/-
(K.K.SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

12-12-2018 Present: None for the petitioner.
Sh. Sanjeev Singh Rana, D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.37 P.M. None appearance of petitioner or her Ld. Csl. today is indicative of the fact that She is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:
12-12-2018

Sd/-
(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.
(Camp at Chamba)**

Ref: No. 111/16

Sh. Amar Singh s/o Shri Parveen, r/o Village Bithal, P.O. Khargat, Tehsil
Bhattiyat, Distt. Chamba, H.P. *..Petitioner.*

Versus

The Executive Engineer, I&PH Division Dalhousie, Distt. Chamba, H.P. *..Respondent.*

12-12-2018 Present: None for the petitioner.
Sh. Sanjeev Singh Rana, D.A. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.35 A.M. Be awaited and put up after lunch hours.

Sd/-
(K.K.SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

12-12-2018 Present: None for the petitioner.
Sh. Sanjeev Singh Rana, D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.35 P.M. None appearance of petitioner or his Authorised Representative today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriat Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
12-12-2018

Sd/-
(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)**

Ref No. : 520/2015
Date of Institution : 21-11-2015
Date of Decision : 12-12-2018

Shri Prem Singh s/o Shri Gulab Chand, r/o Village Mahaliyat, P.O. Killar, District Chamba, H.P. ..Petitioner.

Versus

The Block Development Officer, Pangri at Killar, District Chamba, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh O.P. Bhardwaj, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Prem Singh s/o Shri Gulab Chand, r/o Village Mahaliyat, P.O. Killar, Tehsil Pangri, District Chamba, H.P. before the Block Development Officer, Pangri at Killar, District Chamba, H.P. *vide* demand notice dated nil received in Labour Officer Chamba on 29-05-2012 regarding his alleged illegal termination of services *w.e.f.* 01-12-1997 suffers from delay and laches? If not, Whether termination of services of Shri Prem Singh s/o Shri Gulab Chand, r/o Village Mahaliyat, P.O. Killar, Tehsil Pangri, District Chamba, H.P. by the Block Development Officer, Pangri at Killar, District Chamba, H.P. *w.e.f.* 01-12-1997, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged on musterrol on daily waged basis by respondent without any appointment letter in the year 1986 where he continuously worked till December, 1997. Averments made in the claim petition revealed that petitioner had been engaged and disengaged and given fictional breaks from time to time so that petitioner did not complete 160 days in each calendar year so as to give benefit of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter called ‘the Act’ for brevity) as petitioner belongs to tribal area of Pangri and/or hard area which remains cut off for about six months from the rest of the country. It further transpires from claim petition that State of H.P. had formulated policy of regularization daily waged worker but while engaging petitioner, respondent did not disclose actually number of days and continued to give fictional breaks. It is further alleged that petitioner has been orally terminated by respondent/department without issuing one month’s notice in writing

indicating therein reason for retrenchment or compensation in lieu thereof notice period envisaged under Section 25 -F of the Act. It further remains grievance of petitioner that respondent/department after illegally terminated service of petitioner had re-engaged number of new workmen from time to time and that while terminating service of petitioner junior to him have been retained in violation of Section 25-G of Act which is based on the principle of 'Last come First go'. It is alleged that even after termination of petitioner and reengagement of fresh hands respondent did not issue any notice calling upon petitioner to join duty and as such respondent had committed violation of Section 25 -F, 25-G and 25-H of the Act. Accordingly, petitioner seeks reinstatement with seniority, continuity in service and back wages. It is alleged that petitioner had remained unemployed ever since his termination. It is also prayed that respondent/department should count the period of fictional breaks given from time to time during entire service period from 1986 to 1997 when petitioner had been illegally terminated from service.

4. The respondents contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner had served as labourer in December, 1986 who worked only for 18 days and thereafter the petitioner again worked in 1988 only for 03 days. It further transpires from reply that petitioner had worked on muster roll basis as beldar from May, 1990 to 1992 with breaks in service. It is also denied that respondent had violated provisions of Section 25-F of Act rather no notice was required to be given as petitioner had never completed required number of days. It is also alleged that petitioner of his own accord used to quit from service and lastly as stated above when he did not join duty. It is asserted that petitioner had abandoned job therefore no notice was required. It is alleged that demand notice had been raised after 15 years *i.e.* demand notice was given on 2012 whereas per the allegation he was retrenched in 1997. It is denied that anyone junior to petitioner had been re-engaged or that no junior had been retained and service of petitioner had been terminated illegally. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18, Rule 4 CPC, copy of office order dated July, 2012 Ex. PW1/B, copy of letter dated 17-1-2012 Ex. PW1/C, copy of letter dated 25-5-2011 Ex. PW1/D, copy of letter dated 4-5-2010 Ex. PW1/E and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondents examined RW1 Shri Surender Kumar Thakur, Block Development Officer, Pangri, tendered/proved affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B, copy of order dated 1-1-2015 Ex. RW1/C, copy of Notification Ex. R1 and closed the evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. D.A. for respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 05-12-2016 for determination which are as under:—

- (1) Whether the industrial dispute raised by petitioner *vide* demand notice dated nil *qua* his termination of service *w.e.f.* 01-12-1997 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ..OPP.
- (2) Whether termination of services of the petitioner by the respondent *w.e.f.* 01-12-1997 is/was improper and unjustified as alleged? ..OPP.

- (3) If issue no.2 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (4) Whether the petition is not maintainable in the present form? ..*OPR*.

Relief

9. For the reasons detailed hereunder, my findings on the above issues are as follows:

Issue No. 1	: Discussed
Issue No. 2	: No
Issue No. 3	: Discussed
Issue No. 4	: Yes
Relief.	: Petition is dismissed per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 to 3:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that petitioner had worked for 125 days in the year 1997 and for 116 days in 1996. In any case in preceding 12 months from date of termination *i.e.* on 30-11-1997 as reflected in mandays chart Ex. RW1/B petitioner had factually not worked 160 days as was required to be established by the petitioner so as to invoke provisions of Section 25-F of Act. Stepping into witness box as PW1 petitioner has sworn in affidavit Ex. PW1/A and has relied upon documentary evidence *i.e.* copy of order dated July, 2012 Ex. PW1/B, copy of letter dated 17-1-2012 Ex. PW1/C, copy of letter dated 25-5-2011 Ex. PW1/D and copy of letter dated 4-5-2010 Ex. PW1/E. Although in affidavit, petitioner has on oath asserted to have worked for 160 days in each year but his testimony is not in consonance with documentary evidence led by respondent which reveals that petitioner while being engaged as daily waged beldar on muster roll had not worked for 160 days in any of the years more particularly in 12 months preceding his termination which was required to be established for applicability of Section 25-B and consequently Section 25-F of Act. On the other hand, repudiating evidence led by petitioner RW1 Shri Surender Kumar Thakur, Block Development Officer, Pangri had denied that petitioner had worked for more than 160 days. In his affidavit respondent has specifically stated that petitioner had worked for only 116 days in December, 1986. He has also stated that petitioner himself discontinued to work after 31-11-1997. Thus, respondent precisely relied upon plea of abandonment by placing reliance upon the judgment of Hon'ble Apex Court titled as **G.T. Lad and ors. vs. Chemicals and Fibres India Ltd.** reported in **AIR 1979 SC 582**. Since, respondent has admittedly not produced any reliable evidence establishing that any registered letter was ever issued after 30-1-1997 calling upon petitioner to join duty and merely petitioner had not joined duty would not establish that petitioner had in between to abandon job. It has rightly been contended by Ld. Counsel for the petitioner that plea of abandonment has to be proved like any other fact in issue and from evidence led by petitioner no inference of abandonment can be drawn applying judgment (*supra*). As such, plea of abandonment is held to have not been duly proved. Accordingly, in view of above stated discussion, respondent is held to have not violated provisions of Section 25-F of Act as petitioner to prove applicability of Section 25-B of Act.

12. In so far as violation of Section 25-G is concerned, Ld. Counsel for petitioner has relied upon Ex. PW1/B office order issued by Director, Grameen Development Department, H.P. revealing one Jan Dei wd/o Khem Raj had been appointed as daily waged beldar. With the aid of this document, it cannot be held that any one junior to petitioner had been retained while terminating service of petitioner. Evidently, per evidence on record, it is established that petitioner had worked till 30-11-1997 whereas said Jan Dei had been engaged in 2012. Enough has been emphasized by Ld. Counsel for petitioner placing reliance upon Ex. PW1/F which had been jointly signed by Man Singh, Prem Singh, Leela & Jano addressed to Block Development Officer, Pangri, District Chamba, H.P. had jointly requested for re-engagement. This letter had been written on 4-5-2010 which had been claimed to be a demand notice. Certainly, this letter could not be construed as demand notice as the same was not forwarded to labour authority. Merely because petitioner along-with three others as stated above were co-signatory to letter Ex. PW1/F would not *ipso facto* establish that only Jan Dei was regularly appointed rather when said Jan Dei moved joint application before Block Development Officer, Pangri when her husband was alive but when appointment was made by Director Grameen Development Department H.P. *vide* office order Ex. PW1/B she was engaged as widow of one Khem Raj after seeking approval from the government. As such, engagement of aforesaid Jan Dei was on compassionate ground which could not be construed as engaging any junior to petitioner and not calling upon petitioner to join duty. As such, on the basis of evidence on record, it could not be stated that respondent had either violated Section 25-G or 25-H of Act. Issues No.2 and 3 are thus decided in negative against the petitioner and in favour of respondent.

13. In so far plea of delay and laches is concerned, petitioner has failed to prove issuance of any valid demand notice from which period of limitation could be reckoned. In 2010, petitioner along-with co-worker including Jan Dei had made representation to re-engagement whereas petitioner had been allegedly terminated in 1-12-1997 about 13 years before and thus delay is not satisfactorily explained. Although, delay and laches could not be ground to decline relief to claimant/petitioner but certainly it is important circumstance while granting final relief. Issue No.1 is thus decided as discussed above.

Issue No. 4:

14. Since the petitioner is held to have not worked for 160 days in tribal/hard area of Pangri he could not be claimed benefit of Section 25-B of Act and having not proved Section 25- F of Act besides no one junior to petitioner had been retained and no one have been claimed to join service after termination of service of petitioner as discussed aforesaid paras, it is held that present petition is not maintainable. Issue in question answered in favour of respondent against the petitioner.

Relief:

15. As a sequel to my findings on foregoing issues No.1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

16. The reference is answered in the aforesaid terms.

17. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

18. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 12th day of December, 2018.

Sd/-
(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 824/2016
Date of Institution : 24-11-2016
Date of Decision : 15-12-2018

Shri Karam Singh s/o Shri Bhag Singh, r/o V.P.O. Danna, Tehsil Nurpur, District Kangra, H.P. *..Petitioner.*

Versus

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. *..Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.
For the Respondent(s) : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the alleged termination of services of Shri Karam Singh s/o Shri Bhag Singh, r/o V.P.O. Danna, Tehsil Nurpur District Kangra, H.P. during year 1990 by (i) The Executive Engineer, Nurpur Division, HPPWD Nurpur, District Kangra, H.P. (ii) The Executive Engineer, Jawali Division, HPPWD, Jawali, District Kangra, H.P., who had worked on daily wages basis as beldar and has raised his industrial dispute after about 22 years *vide* demand notice dated nil received in the office of Labour Officer Kangra at Dharamshala 04-03-2013 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of delay of about 22 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1987 who continued to work under HPPWD Sub Division-II and Sub Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in lieu thereof and therefore violated Section 25 -F of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity). It is further alleged that co-workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon'ble High Court of H.P. and those juniors similarly situated had been engaged by respondent no.1 on 25-5-2010 during pendency of writ petition. It is alleged that Nurpur Sub Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that aforesaid work was also of perennial nature. It is claimed that respondent No. 2 *i.e.* Executive Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent No.1 that record *i.e.* retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No. 2. Averment made in the claim petition further reveal that petitioner had worked in road construction along-with several juniors retained by respondent who had been re-engaged and names of 24 workmen *i.e.* Rai Singh and others had been reflected in para No. 3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with re-engagement of workmen mentioned in para No. 3 of claim petition) and that petitioner had worked under several mates in construction roads leading to Defence road, Aund, Chakki, Nurpur etc. besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of Section 25-G had re-engaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent no.1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon'ble Apex Court *i.e.* AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25-G of Act was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of re-instatement with back wages, seniority and all other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was shifted/renamed as HPPWD Division Jawali *vide* Govt. Notification No. PBW-(A) A (1) 17/94 dated 21-7-1994. It has been emphatically denied that petitioner had worked with respondent from 1987 to 1990 rather petitioner had never been engaged by respondent and therefore question of petitioner having worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically stated that persons named at serial No.1 to 24 were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P. however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of Section 25-B of Act and for said reason, there was no need to serve notice under Section 25 -F of Act. It is also maintained that respondent had neither retained nor

engaged any junior besides did not violate the policy of 'Last come First go' envisaged under Section 25 -G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 21 years from alleged termination. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is re-asserted that respondent had allowed 18 workers to join on 25-5-2010 in pursuance to various Awards of this court passed on 22-12-2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 153. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, copy of letter dated 19-8-1998 Ex. PW1/B, copy of letter dated 18-12-1999 Ex. PW1/C, copy of notice dated 4-5-2002 Ex. PW1/D, copy of resolution dated 18-7-2002 Ex. PW1/E, copy of UPC and registered postal receipts Ex. PW1/F & G, copy of letter dated 18-1-2000 Ex. PW1/H. The petitioner examined Shri Sukar Deen and Gian Chand as PW2 & PW3 respectively and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21-7-1994 Ex. RW1/B, copy of office order dated 23-7-1994 Ex. RW1/C, copy of office order dated 29-11-2010 Ex. RW1/D, copy of letter dated 19-8-1998 Ex. RW1/E, copy of application dated 18-12-1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18-1-2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H, copy of mandays chart of Kusum Lata Ex. RW1/I & Ex. RW1/J and closed evidence.

7. I have heard the Ld. Counsel of petitioner and ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 07-7-2018 for determination which are as under:—

- (1) Whether termination of the services of petitioner by the respondents during year, 1990 is/was legal and justified as alleged?
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged? ..*OPR.*

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No.1	: Yes
Issue No.2	: Discussed
Issue No.3	: Yes
Issue No.4	: Discussed
Relief	: Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1987 till 1990 and thus *prima facie* there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year in which petitioner was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for four years from 1987 to 1990 without any stipulation of specific months as stated above. The testimony of petitioner has been supported by PW2 Sukar Deen and PW3 Gian Chand. Both these witnesses have coaxed in the same voice that petitioner was engaged with respondent without deposing period when respondent had engaged petitioner. PW2 is a retired HPPWD official from Nurpur Division whereas PW3 is also an official of HPPWD Division Nurpur but he is also union leader. PW2 has revealed in cross-examination that he knew petitioner since childhood and was of the area of this witness which apparently shows motive of this witness to depose in favour of petitioner. Similarly, PW3 Gian Chand also appears to be interested witness as much as he happens to be union leader and petitioner was member of the union to which PW3 belongs. In cross-examination PW3 has admitted that petitioner had never worked with him and as such he had no occasion to know as to where petitioner worked. Thus, oral evidence led by petitioner is of no help to case of petitioner as there is overwhelming evidence on record led by respondent in particular mandays chart of petitioner which established that petitioner had not been engaged by respondent. Admittedly, it is not the case of petitioner that he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner from 1987 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove muster rolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent No.1 had not engaged petitioner as claimed by him from 1987 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as

shown in para no.3 of claim petition and para No. 2 of affidavit Ex.PW1/A worked under HPPWD Division Nurpur but RW1 has shown his inability to tell if any notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29-11-2010, only those workers had been shown in seniority list aforesaid who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

12. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali, and this fact has remained undisputed however Sub Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex.RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he failed to prove his engagement by respondents. Enough has been emphasized by Ld. Counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22-12-2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen to that of petitioner had been retained and service of petitioner was illegally terminated moreso when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub Division Suliali thereafter under Nurpur Division. As such, Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No. 2 of affidavit in HPPWD Sub Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of HP in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter re-employment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

13. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board vs. Anjali Bepari (MS)**, it has been contended that respondent had violated principle of 'Last come First go' envisaged under Section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of notice under Section

25-F of Act or payment of retrenchment compensation did not arise which was *sine qua non* for valid order of termination. In view of judgment 1997 (*supra*) and aforesaid reason, respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues no. 2 & 3 are decided in negative against petitioner and in favour of respondent.

14. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1987 to 1990, and as such it cannot be held that there had been delay and laches on part of petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue No. 4 has become redundant which is decided accordingly.

Issue No. 3:

15. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief:

16. As a sequel to my findings on foregoing issues No.1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of December, 2018.

Sd/-
(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No.	: 864/2016
Date of Institution	: 26-11-2016
Date of Decision	: 15-12-2018

Shri Jagdish Chand s/o Shri Kirpa Ram, r/o Village and Post Office Aund, Tehsil Nurpur, District Kangra, H.P. ..Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.

2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P.

..Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Jagdish Chand s/o Shri Kirpa Ram, r/o Village and Post Office Aund, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (1) The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P. (2) The Executive Engineer, H.P.P.W.D. Division, Jawali, Tehsil Nurpur, District Kangra, H.P., who had worked on daily wages and has raised his industrial dispute after 23 years *vide* demand notice dated-nil-received on 04-03-2013, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of delay of about 23 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1985 who continued to work under HPPWD Sub Division-II and Sub Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in lieu thereof and therefore violated Section 25 -F of the Industrial Disputes Act, 1947 (hereinafter called ‘Act’ for brevity). It is further alleged that co-workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon’ble High Court of H.P. and those juniors similarly situated had been engaged by respondent No.1 on 25-5-2010 during pendency of writ petition. It is alleged that Nurpur Sub Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that aforesaid work was also of perennial nature. It is claimed that respondent No. 2 *i.e.* Executive Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent No.1 that record *i.e.* retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No. 2. Averment made in the claim petition further reveal that petitioner had worked in road

construction along-with several juniors retained by respondent who had been re-engaged and names of 24 workmen *i.e.* Rai Singh and others had been reflected in para no. 3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with reengagement of workmen mentioned in para No. 3 of claim petition) and that petitioner had worked in construction of several roads etc. besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of Section 25-G had re-engaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent No.1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon'ble Apex Court *i.e.* AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25-G of Act was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of reinstatement with back wages, seniority and all other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was shifted/renamed as HPPWD Division Jawali *vide* Govt. Notification No. PBW-(A) A (1) 17/94 dated 21-7-1994. It has been emphatically denied that petitioner had worked with respondent from 1985 to 1990 rather petitioner had never been engaged by respondent and therefore question of petitioner having worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically stated that persons named at serial No.1 to 24 were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P. however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of Section 25-B of Act and for said reason, there was no need to serve notice under Section 25-F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under Section 25-G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 21 years from alleged termination. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is reasserted that respondent had allowed 18 workers to join on 25-5-2010 in pursuance to various Awards of this court passed on 22-12-2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 153. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back-wages and all consequential relief.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18, Rule 4 CPC Ex. PW1/A, copy of letter dated 19-8-1998 Ex. PW1/B, copy of letter dated 18-12-1999 Ex. PW1/C, copy of notice dated 4-5-2002 Ex. PW1/D, copy of resolution dated 18-7-2002 Ex. PW1/E, copy of UPC and registered postal receipts Ex. PW1/F & G, copy of letter dated 18-1-2000 Ex. PW1/H. The petitioner examined Shri Sukar Deen and Gian Chand as PW2 & PW3 respectively and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21-7-1994 Ex. RW1/B, copy of office order dated 23-7-1994 Ex. RW1/C, copy of office order dated 29-11-2010 Ex. RW1/D, copy of letter dated 19-8-1998 Ex. RW1/E, copy of application dated 18-12-1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18-1-2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H, copy of mandays chart of Kusum Lata Ex. RW1/I & Ex. RW1/J and closed evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 07-7-2018 for determination which are as under:—

- (1) Whether termination of the services of petitioner by the respondents during year, 1990 is/was legal and justified as alleged?
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? *..OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? *..OPR.*
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged? *..OPR.*

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:-

Issue No. 1	: Yes
Issue No. 2	: Discussed
Issue No. 3	: Yes
Issue No. 4	: Discussed
Relief	: Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1985 till 1990

and thus *prima facie* there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year in which petitioner was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for five years from 1985 to 1990 without any stipulation of specific months as stated above. The testimony of petitioner has been supported by PW2 Sukar Deen and PW3 Gian Chand. Both these witnesses have coaxed in the same voice that petitioner was engaged with respondent without deposing period when respondent had engaged petitioner. PW2 is a retired HPPWD official from Nurpur Division whereas PW3 is also an official of HPPWD Division Nurpur but he is also union leader. PW2 has revealed in cross-examination that he knew petitioner since childhood and was of the area of this witness which apparently shows motive of this witness to depose in favour of petitioner. Similarly, PW3 Gian Chand also appears to be interested witness as much as he happens to be union leader and petitioner was member of the union to which PW3 belongs. In cross-examination PW3 has admitted that petitioner had never worked with him and as such he had no occasion to know as to where petitioner worked. Thus, oral evidence led by petitioner is of no help to case of petitioner as there is overwhelming evidence on record led by respondent in particular mandays chart of petitioner which established that petitioner had not been engaged by respondent. Admittedly, it is not the case of petitioner that he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner from 1985 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove muster rolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent no.1 had not engaged petitioner as claimed by him from 1985 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as shown in para No. 3 of claim petition and para No. 2 of affidavit Ex. PW1/A worked under HPPWD Division Nurpur but RW1 has shown his inability to tell if any notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29-11-2010, only those workers had been shown in seniority list aforesaid who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

12. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali, and this fact has remained undisputed however Sub Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex. RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he failed to prove his engagement by respondents. Enough has been emphasized by Ld. Counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. *vide*

which the Award dated 22-12-2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen to that of petitioner had been retained and service of petitioner was illegally terminated moreso when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub Division Suliali thereafter under Nurpur Division. As such, Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No. 2 of affidavit in HPPWD Sub Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of H.P. in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter re-employment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

13. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board vs. Anjali Bepari (MS)**, it has been contended that respondent had violated principle of 'Last come First go' envisaged under Section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of notice under Section 25-F of Act or payment of retrenchment compensation did not arise which was *sine qua non* for valid order of termination. In view of judgment 1997 (*supra*) and aforesaid reason, respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues No. 2 & 3 are decided in negative against petitioner and in favour of respondent.

14. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1985 to 1990, and as such it cannot be held that there had been delay and laches on part of petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue No. 4 has become redundant which is decided accordingly.

Issue No. 3:

15. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in

foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief:

16. As a sequel to my findings on foregoing issues no.1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of December, 2018.

Sd/-
(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 859/2016
Date of Institution : 26-11-2016
Date of Decision : 15-12-2018

Shri Sher Singh s/o Shri Gorthu Ram, r/o Village Barnala, P.O. Daduhn, Tehsil Jawali, District Kangra, H.P. *..Petitioner.*

Versus

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.

2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. *..Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.
For the Respondent(s) : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the alleged termination of services of Sh. Sher Singh s/o Sh. Gorthu Ram, r/o Village Barnala, P.O. Daduhn, Tehsil Jawali, District Kangra, H.P. by (i) the

Executive Engineer, H.P.P.W.D. Division Nurpur, Distt. Kangra, H.P. (ii) the Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. during the year 1990 who had worked on daily wages basis as beldar and has raised his industrial dispute after about 20 years *vide* demand notice dated nil received in the office of Labour Officer Kangra at Dharamshala on 13-06-2011, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view delay of about 20 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1983 who continued to work under HPPWD Sub Division-II and Sub Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in lieu thereof and therefore violated Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity). It is further alleged that co-workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon'ble High Court of H.P. and those juniors similarly situated had been engaged by respondent no.1 on 25-5-2010 during pendency of writ petition. It is alleged that Nurpur Sub- Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that aforesaid work was also of perennial nature. It is claimed that respondent No. 2 *i.e.* Executive Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent No.1 that record *i.e.* retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No. 2. Averment made in the claim petition further reveal that petitioner had worked in road construction along-with several juniors retained by respondent who had been re-engaged and names of 24 workmen *i.e.* Rai Singh and others had been reflected in para No. 3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with re-engagement of workmen mentioned in para No. 3 of claim petition) and that petitioner had worked under several mates in construction of road leading to Kotla to Balehad, Kotla to Sohlda Bada road etc. besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of Section 25-G had reengaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent no.1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon'ble Apex Court *i.e.* AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25-G of Act was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of reinstatement with back wages, seniority and all other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute

by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was shifted/renamed as HPPWD Division Jawali *vide* Govt. Notification No. PBW-(A) A (1) 17/94 dated 21-7-1994. It has been emphatically denied that petitioner had worked with respondent from 1983 to 1990 rather petitioner had never been engaged by respondent and therefore question of petitioner having worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically stated that persons named at serial No.1 to 24 were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P. however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of Section 25-B of Act and for said reason, there was no need to serve notice under Section 25-F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under Section 25 -G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 21 years from alleged termination. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is re-asserted that respondent had allowed 18 workers to join on 25-5-2010 in pursuance to various Awards of this court passed on 22-12-2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 153. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18, Rule 4 CPC Ex. PW1/A, copy of letter dated 19-8-1998 Ex. PW1/B, copy of letter dated 18-12-1999 Ex. PW1/C, copy of notice dated 4-5-2002 Ex. PW1/D, copy of resolution dated 18-7-2002 Ex. PW1/E, copy of UPC and registered postal receipts Ex. PW1/F & G, copy of letter dated 18.1.2000 Ex. PW1/H. The petitioner examined Shri Sukar Deen and Gian Chand as PW2 & PW3 respectively and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21-7-1994 Ex. RW1/B, copy of office order dated 23-7-1994 Ex. RW1/C, copy of office order dated 29-11-2010 Ex. RW1/D, copy of letter dated 19-8-1998 Ex. RW1/E, copy of application dated 18-12-1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18-1-2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H, copy of mandays chart of Kusum Lata Ex. RW1/I & Ex. RW1/J and closed evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 07-7-2018 for determination which are as under:—

- (1) Whether termination of the services of petitioner by the respondents during year, 1990 is/was legal and justified as alleged?

- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged? ..*OPR*.

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:-

Issue No. 1	: Yes
Issue No. 2	: Discussed
Issue No. 3	: Yes
Issue No. 4	: Discussed
Relief	: Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1986 till 1990 and thus *prima facie* there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year in which petitioner was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for five years from 1986 to 1990 without any stipulation of specific months as stated above. The testimony of petitioner has been supported by PW2 Sukar Deen and PW3 Gian Chand. Both these witnesses have coaxed in the same voice that petitioner was engaged with respondent without deposing period when respondent had engaged petitioner. PW2 is a retired HPPWD official from Nurpur Division whereas PW3 is also an official of HPPWD Division Nurpur but he is also union leader. PW2 has revealed in cross-examination that he knew petitioner since childhood and was of the area of this witness which apparently shows motive of this witness to depose in favour of petitioner. Similarly, PW3 Gian Chand also appears to be interested witness as much as he happens to be union leader and petitioner was member of the union to which PW3 belongs. In cross-examination PW3 has admitted that petitioner had never worked with him and as such he had no occasion to know as to where petitioner worked. Thus, oral evidence led by petitioner is of no help to case of petitioner as there is overwhelming evidence on record led by respondent in particular mandays chart of petitioner which established that petitioner had not been engaged by respondent. Admittedly, it is not the case of petitioner that he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner

from 1986 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove muster rolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent no.1 had not engaged petitioner as claimed by him from 1983 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as shown in para No. 3 of claim petition and para No. 2 of affidavit Ex.PW1/A worked under HPPWD Division Nurpur but RW1 has shown his inability to tell if any notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29-11-2010, only those workers had been shown in seniority list aforesaid who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

12. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali, and this fact has remained undisputed however Sub Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex.RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he failed to prove his engagement by respondents. Enough has been emphasized by Ld. Counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22-12-2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen to that of petitioner had been retained and service of petitioner was illegally terminated *moreso* when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub Division Suliali thereafter under Nurpur Division. As such, Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No. 2 of affidavit in HPPWD Sub Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of HP in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter re-employment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

14. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board vs. Anjali Bepari (MS)**, it

has been contended that respondent had violated principle of 'Last come First go' envisaged under Section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of notice under Section 25-F of Act or payment of retrenchment compensation did not arise which was sine qua non for valid order of termination. In view of judgment 1997 (*supra*) and aforesaid reason, respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues No. 2 & 3 are decided in negative against petitioner and in favour of respondent.

15. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1983 to 1990, and as such it cannot be held that there had been delay and laches on part of petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue No.4 has become redundant which is decided accordingly.

Issue No. 3:

16. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief:

17. As a sequel to my findings on foregoing issues No.1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of December, 2018.

Sd/-
(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No. : 809/2016
Date of Institution : 24-11-2016
Date of Decision : 15-12-2018

Shri Joginder Singh s/o Shri Churu Ram, r/o Village Barnoli (Moari), and P.O. Bhadwar, Tehsil Nurpur, District Kangra, H.P. ..Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.

2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P.

..Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.
For the Respondent(s) : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the alleged termination of services of Shri Joginder Singh s/o Shri Churu Ram, r/o Village Barnoli (Moari), and P.O. Bhadwar, Tehsil Nurpur, District Kangra, H.P. during year 1990 by (i) The Executive Engineer, Nurpur Division HPPWD Nurpur, District Kangra, H.P. (ii) The Executive Engineer, Jawali Division, HPPWD Jawali, District Kangra, H.P., who had worked on daily wages basis as beldar and has raised his industrial dispute after about 22 years vide demand notice dated nil received in the office of Labour Officer Dharamshala 13-06-2012 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of delay of about 22 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1987 who continued to work under HPPWD Sub-Division-II and Sub-Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in lieu thereof and therefore violated Section 25 -F of the Industrial Disputes Act, 1947 (hereinafter called ‘Act’ for brevity). It is further alleged that co-workers similarly situated as that of applicant/petitioner had filed case before Labour Court and

before Hon'ble High Court of H.P. and those juniors similarly situated had been engaged by respondent No.1 on 25-5-2010 during pendency of writ petition. It is alleged that Nurpur Sub Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that aforesaid work was also of perennial nature. It is claimed that respondent No. 2 *i.e.* Executive Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent No.1 that record *i.e.* retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No. 2. Averment made in the claim petition further reveal that petitioner had worked in road construction along-with several juniors retained by respondent who had been re-engaged and names of 24 workmen *i.e.* Rai Singh and others had been reflected in para No. 3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with re-engagement of workmen mentioned in para No. 3 of claim petition) and that petitioner had worked under several mates in construction of road leading to Muari to Kotplahri etc. besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of Section 25-G had re-engaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent No.1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon'ble Apex Court *i.e.* AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25-G of Act was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of reinstatement with back wages, seniority and all other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was shifted/renamed as HPPWD Division Jawali *vide* Govt. Notification No. PBW-(A) A (1) 17/94 dated 21-7-1994. It has been emphatically denied that petitioner had worked with respondent from 1987 to 1990 rather petitioner had never been engaged by respondent and therefore question of petitioner having worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically stated that persons named at serial No.1 to 24 were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P. however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of Section 25-B of Act and for said reason, there was no need to serve notice under Section 25-F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under Section 25-G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 21 years from alleged termination. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is reasserted that respondent had allowed 18 workers to join on 25-5-2010 in pursuance to various Awards of this court passed on 22-12-2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal r/o Village & Post Office Sulyali, Tehsil Nurpur, District

Kangra, H.P., it is contended that she was junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 153. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18, Rule 4 CPC Ex. PW1/A, copy of letter dated 19-8-1998 Ex. PW1/B, copy of letter dated 18-12-1999 Ex. PW1/C, copy of notice dated 4-5-2002 Ex. PW1/D, copy of resolution dated 18-7-2002 Ex. PW1/E, copy of UPC and registered postal receipts Ex. PW1/F & G, copy of letter dated 18-1-2000 Ex. PW1/H. The petitioner examined Shri Sukar Deen and Gian Chand as PW2 & PW3 respectively and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21-7-1994 Ex. RW1/B, copy of office order dated 23-7-1994 Ex. RW1/C, copy of office order dated 29-11-2010 Ex. RW1/D, copy of letter dated 19-8-1998 Ex. RW1/E, copy of application dated 18-12-1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18-1-2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H, copy of mandays chart of Kusum Lata Ex. RW1/I & Ex. RW1/J and closed evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 24-3-2018 for determination which are as under:—

- (1) Whether termination of the services of petitioner by the respondents during year, 1990 is/was illegal and unjustified as alleged?
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form? ..*OPR.*
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged. If so, its effect? ..*OPR.*

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:-

Issue No. 1	: No
Issue No. 2	: Discussed
Issue No. 3	: Yes
Issue No. 4	: Discussed
Relief	: Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1987 till 1990 and thus *prima facie* there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year in which petitioner was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for four years from 1987 to 1990 without any stipulation of specific months as stated above. The testimony of petitioner has been supported by PW2 Sukar Deen and PW3 Gian Chand. Both these witnesses have coaxed in the same voice that petitioner was engaged with respondent without deposing period when respondent had engaged petitioner. PW2 is a retired HPPWD official from Nurpur Division whereas PW3 is also an official of HPPWD Division Nurpur but he is also union leader. PW2 has revealed in cross-examination that he knew petitioner since childhood and was of the area of this witness which apparently shows motive of this witness to depose in favour of petitioner. Similarly, PW3 Gian Chand also appears to be interested witness as much as he happens to be union leader and petitioner was member of the union to which PW3 belongs. In cross-examination PW3 has admitted that petitioner had never worked with him and as such he had no occasion to know as to where petitioner worked. Thus, oral evidence led by petitioner is of no help to case of petitioner as there is overwhelming evidence on record led by respondent in particular mandays chart of petitioner which established that petitioner had not been engaged by respondent. Admittedly, it is not the case of petitioner that he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner from 1987 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove muster rolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent No.1 had not engaged petitioner as claimed by him from 1987 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as shown in para no. 3 of claim petition and para No. 2 of affidavit Ex. PW1/A worked under HPPWD Division Nurpur but RW1 has shown his inability to tell if any notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29-11-2010, only those workers had been shown in seniority list aforesaid who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

12. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali, and this fact has remained undisputed however Sub Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex.RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he failed to prove his engagement by respondents. Enough has been emphasized by Ld. Counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22-12-2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen to that of petitioner had been retained and service of petitioner was illegally terminated moreso when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub Division Suliali thereafter under Nurpur Division. As such, Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No. 2 of affidavit in HPPWD Sub Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of H.P. in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter re-employment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

13. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board vs. Anjali Bepari (MS)**, it has been contended that respondent had violated principle of 'Last come First go' envisaged under Section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of notice under Section 25-F of Act or payment of retrenchment compensation did not arise which was *sine qua non* for valid order of termination. In view of judgment 1997 (*supra*) and aforesaid reason, respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues No. 2 & 3 are decided in negative against petitioner and in favour of respondent.

14. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1987 to 1990, and as such it cannot be held that there had been delay and laches on part of

petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue No. 4 has become redundant which is decided accordingly.

Issue No. 3:

15. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief:

16. As a sequel to my findings on foregoing issues No.1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 15th of December, 2018.

Sd/-
(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No.	: 883/2016
Date of Institution	: 07-12-201
Date of Decision	: 15-12-2018

Shri Balwant Singh s/o Shri Tej Ram, r/o V.P.O. Khanni, Tehsil Nurpur, District Kangra, H.P. ..Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.

2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. ..Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.
 For the Respondent(s) : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the alleged termination of services of Shri Balwant Singh s/o Shri Tej Ram, r/o V.P.O. Khanni, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (i) the Executive Engineer, H.P.P.W.D. Division Nurpur, District Kangra, H.P. (ii) the Executive Engineer, H.P.P.W.D., Division Jawali, District Kangra, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after about 22 years *vide* demand notice dated nil received in the Labour Office Kangra at Dharamshala on 13-06-2012, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view delay of about 22 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1981 who continued to work under HPPWD Sub-Division-II and Sub-Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in lieu thereof and therefore violated Section 25 -F of the Industrial Disputes Act, 1947 (hereinafter called ‘Act’ for brevity). It is further alleged that co-workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon’ble High Court of H.P. and those juniors similarly situated had been engaged by respondent no.1 on 25-5-2010 during pendency of writ petition. It is alleged that Nurpur Sub Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that aforestated work was also of perennial nature. It is claimed that respondent No. 2 *i.e.* Executive Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent no.1 that record *i.e.* retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No. 2. Averment made in the claim petition further reveal that petitioner had worked in road construction along-with several juniors retained by respondent who had been reengaged and names of 24 workmen *i.e.* Rai Singh and others had been reflected in para No. 3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with reengagement of workmen mentioned in para No. 3 of claim petition) and that petitioner had worked under several mates in construction of road leading to Nagawari Simbli road, Defence road etc. besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of

Section 25-G had re-engaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent No.1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon'ble Apex Court *i.e.* AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25-G of Act was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of re-instatement with back wages, seniority and all other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was shifted/renamed as HPPWD Division Jawali *vide* Govt. Notification No. PBW-(A) A (1) 17/94 dated 21-7-1994. It has been emphatically denied that petitioner had worked with respondent from 1981 to 1990 rather petitioner had never been engaged by respondent and therefore question of petitioner having worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically stated that persons named at serial no.1 to 24 were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P. however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of Section 25-B of Act and for said reason, there was no need to serve notice under Section 25 -F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under Section 25 -G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 21 years from alleged termination. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is reasserted that respondent had allowed 18 workers to join on 25-5-2010 in pursuance to various Awards of this court passed on 22-12-2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 1 53. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, copy of letter dated 19-8-1998 Ex. PW1/B, copy of letter dated 18-12-1999 Ex. PW1/C, copy of notice dated 4-5-2002 Ex. PW1/D, copy of resolution dated 18-7-2002 Ex. PW1/E, copy of UPC and registered postal receipts Ex. PW1/F & G, copy of letter dated 18-1-2000 Ex. PW1/H. The petitioner examined Shri Sukar Deen and Gian Chand as PW2 & PW3 respectively and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R

Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21-7-1994 Ex. RW1/B, copy of office order dated 23-7-1994 Ex. RW1/C, copy of office order dated 29-11-2010 Ex. RW1/D, copy of letter dated 19-8-1998 Ex. RW1/E, copy of application dated 18-12-1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18-1-2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H, copy of mandays chart of Kusum Lata Ex. RW1/I & Ex. RW1/J and closed evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 07-7-2018 for determination which are as under:—

- (1) Whether termination of the services of petitioner by the respondents during year, 1990 is/was legal and justified as alleged?
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged. ..*OPR.*

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:-

Issue No. 1	: Yes
Issue No. 2	: Discussed
Issue No. 3	: Yes
Issue No. 4	: Discussed
Relief	: Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1981 till 1990 and thus *prima facie* there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year in which petitioner was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for six years years from 1985 to 1990 without any stipulation of specific months as stated above. The testimony of petitioner has been supported by PW2 Sukar Deen

and PW3 Gian Chand. Both these witnesses have coaxed in the same voice that petitioner was engaged with respondent without deposing period when respondent had engaged petitioner. PW2 is a retired HPPWD official from Nurpur Division whereas PW3 is also an official of HPPWD Division Nurpur but he is also union leader. PW2 has revealed in cross-examination that he knew petitioner since childhood and was of the area of this witness which apparently shows motive of this witness to depose in favour of petitioner. Similarly, PW3 Gian Chand also appears to be interested witness as much as he happens to be union leader and petitioner was member of the union to which PW3 belongs. In cross-examination PW3 has admitted that petitioner had never worked with him and as such he had no occasion to know as to where petitioner worked. Thus, oral evidence led by petitioner is of no help to case of petitioner as there is overwhelming evidence on record led by respondent in particular mandays chart of petitioner which established that petitioner had not been engaged by respondent. Admittedly, it is not the case of petitioner that he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner from 1985 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove muster rolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent no.1 had not engaged petitioner as claimed by him from 1985 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as shown in para No.3 of claim petition and para No. 2 of affidavit Ex.PW1/A worked under HPPWD Division Nurpur but RW1 has shown his inability to tell if any notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29-11-2010, only those workers had been shown in seniority list aforesaid who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

12. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali, and this fact has remained undisputed however Sub-Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex.RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub-Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he failed to prove his engagement by respondents. Enough has been emphasized by Ld. Counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22-12-2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen to that of petitioner had been retained and service of petitioner was illegally terminated *moreso* when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub-Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub Division Suliali thereafter under Nurpur Division.

As such, Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No. 2 of affidavit in HPPWD Sub-Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of H.P. in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter re-employment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

13. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board vs. Anjali Bepari (MS)**, it has been contended that respondent had violated principle of 'Last come First go' envisaged under Section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of notice under Section 25-F of Act or payment of retrenchment compensation did not arise which was *sine qua non* for valid order of termination. In view of judgment 1997 (*supra*) and aforesaid reason, respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues No. 2 & 3 are decided in negative against petitioner and in favour of respondent.

14. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1985 to 1990, and as such it cannot be held that there had been delay and laches on part of petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue No.4 has become redundant which is decided accordingly.

Issue No. 3:

15. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief:

16. As a sequel to my findings on foregoing issues No. 1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of December, 2018.

Sd/-
(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 813/2016
Date of Institution : 24-11-2016
Date of Decision : 15-12-2018

Shri Tilak Raj s/o Shri Prakash Chand, r/o Village and Post Office Haddal, Tehsil Nurpur, District Kangra, H.P. *..Petitioner.*

Versus

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.

2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. *..Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.
For the Respondent(s) : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the alleged termination of services of Sh. Tilak Raj s/o Sh. Prakash Chand, r/o Village and Post Office Haddal, Tehsil Nurpur, Dist. Kangra, H.P. by (1) the Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P., and (2) the Executive Engineer, HPPWD Division Nurpur, Distt. Kangra, H.P. during the year 1990, who had

worked on daily wages basis as beldar and has raised his industrial dispute after about 21 years *vide* demand notice dated nil received in the office of Labour Officer Dharamshala on 29-11-2012, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view delay of about 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1985 who continued to work under HPPWD Sub Division-II and Sub Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in lieu thereof and therefore violated Section 25 -F of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity). It is further alleged that co-workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon'ble High Court of H.P. and those juniors similarly situated had been engaged by respondent No.1 on 25-5-2010 during pendency of writ petition. It is alleged that Nurpur Sub Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that aforestated work was also of perennial nature. It is claimed that respondent No. 2 *i.e.* Executive Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent No.1 that record *i.e.* retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No.2. Averment made in the claim petition further reveal that petitioner had worked in road construction along-with several juniors retained by respondent who had been re-engaged and names of 24 workmen *i.e.* Rai Singh and others had been reflected in para No. 3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with re-engagement of workmen mentioned in para No. 3 of claim petition) and that petitioner had worked under several mates in construction of road leading to Jatoli roa, Chakki Dhar to Bod etc. besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of Section 25-G had re-engaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent No.1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon'ble Apex Court *i.e.* AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25-G of Act was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of reinstatement with back wages, seniority and all other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was

shifted/renamed as HPPWD Division Jawali *vide* Govt. Notification no.PBW-(A) A (1) 17/94 dated 21-7-1994. It has been emphatically denied that petitioner had worked with respondent from 1985 to 1990 rather petitioner had never been engaged by respondent and therefore question of petitioner having worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically stated that persons named at serial No.1 to 24 were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P. however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of Section 25-B of Act and for said reason, there was no need to serve notice under Section 25 -F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under Section 25-G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 21 years from alleged termination. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is reasserted that respondent had allowed 18, workers to join on 25-5-2010 in pursuance to various Awards of this court passed on 22-12-2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 153. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, copy of letter dated 19-8-1998 Ex. PW1/B, copy of letter dated 18-12-1999 Ex. PW1/C, copy of notice dated 4-5-2002 Ex. PW1/D, copy of resolution dated 18-7-2002 Ex. PW1/E, copy of UPC and registered postal receipts Ex. PW1/F & G, copy of letter dated 18-1-2000 Ex. PW1/H. The petitioner examined Shri Sukar Deen and Gian Chand as PW2 & PW3 respectively and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21-7-1994 Ex. RW1/B, copy of office order dated 23-7-1994 Ex. RW1/C, copy of office order dated 29-11-2010 Ex. RW1/D, copy of letter dated 19-8-1998 Ex. RW1/E, copy of application dated 18-12-1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18-1-2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H, copy of mandays chart of Kusum Lata Ex. RW1/I & Ex. RW1/J and closed evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 24-3-2018 for determination which are as under:—

- (1) Whether termination of the services of petitioner by the respondents during year, 1990 is/was illegal and unjustified as alleged?

- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (3) Whether the claim petition is not maintainable in the present form? ..*OPR*.
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged. If so, its effect? ..*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1	: No
Issue No. 2	: Discussed
Issue No. 3	: Yes
Issue No. 4	: Discussed
Relief	: Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1985 till 1990 and thus *prima facie* there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year in which petitioner was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for five years from 1985 to 1990 without any stipulation of specific months as stated above. The testimony of petitioner has been supported by PW2 Sukar Deen and PW3 Gian Chand. Both these witnesses have coaxed in the same voice that petitioner was engaged with respondent without deposing period when respondent had engaged petitioner. PW2 is a retired HPPWD official from Nurpur Division whereas PW3 is also an official of HPPWD Division Nurpur but he is also union leader. PW2 has revealed in cross-examination that he knew petitioner since childhood and was of the area of this witness which apparently shows motive of this witness to depose in favour of petitioner. Similarly, PW3 Gian Chand also appears to be interested witness as much as he happens to be union leader and petitioner was member of the union to which PW3 belongs. In cross-examination PW3 has admitted that petitioner had never worked with him and as such he had no occasion to know as to where petitioner worked. Thus, oral evidence led by petitioner is of no help to case of petitioner as there is overwhelming evidence on record led by respondent in particular mandays chart of petitioner which established that petitioner had not been engaged by respondent. Admittedly, it is not the case of petitioner that he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner

from 1985 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove muster rolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent no.1 had not engaged petitioner as claimed by him from 1985 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as shown in para No.3 of claim petition and para No.2 of affidavit Ex.PW1/A worked under HPPWD Division Nurpur but RW1 has shown his inability to tell if any notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29-11-2010, only those workers had been shown in seniority list aforesaid who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

12. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali, and this fact has remained undisputed however Sub Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex.RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he failed to prove his engagement by respondents. Enough has been emphasized by ld. counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22-12-2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen to that of petitioner had been retained and service of petitioner was illegally terminated moreso when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub Division Suliali thereafter under Nurpur Division. As such, Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No. 2 of affidavit in HPPWD Sub Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of HP in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter re-employment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

13. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board vs.**

Anjali Bepari (MS), it has been contended that respondent had violated principle of 'Last come First go' envisaged under Section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of notice under Section 25-F of Act or payment of retrenchment compensation did not arise which was *sine qua non* for valid order of termination. In view of judgment 1997 (*supra*) and aforesaid reason, respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues No. 2 & 3 are decided in negative against petitioner and in favour of respondent.

14. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1985 to 1990, and as such it cannot be held that there had been delay and laches on part of petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue No.4 has become redundant which is decided accordingly.

Issue No. 3:

15. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief:

16. As a sequel to my findings on foregoing issues no.1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of December, 2018.

Sd/-
(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 819/2016
Date of Institution : 24-11-2016
Date of Decision : 15-12-2018

Shri Gani Deen s/o Shri Ibrahim, r/o Village and P.O. Haddal, Tehsil Nurpur, District Kangra, H.P. ..Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.

2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. ..Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.
For the Respondent(s) : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the alleged termination of services of Shri Gani Deen s/o Shri Ibrahim, r/o Village and P.O. Haddal, Tehsil Nurpur, District Kangra, H.P. during 1990 by (i) The Executive Engineer, Nurpur Division, HPPWD Nurpur, District Kangra, H.P. (ii) The Executive Engineer, Jawali Division, HPPWD Jawali, District Kangra, H.P., who had worked on daily wages basis as beldar and has raised his industrial dispute after about 21 years *vide* demand notice dated nil received in the office of Labour Officer Dharamshala 29-11-2012 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of delay of about 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1985 who continued to work under HPPWD Sub-Division-II and Sub-Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in lieu thereof and therefore violated Section 25 -F of the Industrial Disputes Act, 1947 (hereinafter called ‘Act’ for brevity). It is further alleged that co-

workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon'ble High Court of H.P. and those juniors similarly situated had been engaged by respondent No.1 on 25-5-2010 during pendency of writ petition. It is alleged that Nurpur Sub- Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that aforestated work was also of perennial nature. It is claimed that respondent No. 2 *i.e.* Executive Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent No.1 that record *i.e.* retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No. 2. Averment made in the claim petition further reveal that petitioner had worked in road construction along-with several juniors retained by respondent who had been re-engaged and names of 24 workmen *i.e.* Rai Singh and others had been reflected in para No. 3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with re-engagement of workmen mentioned in para No. 3 of claim petition) and that petitioner had worked under several mates in construction of road leading to Defence road etc. besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of Section 25-G had re-engaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent no.1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon'ble Apex Court *i.e.* AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25 - G of Act was not complied with by respondents besides violation of Section 25 -F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of reinstatement with back wages, seniority and all other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was shifted/renamed as HPPWD Division Jawali *vide* Govt. Notification No. PBW-(A) A (1) 17/94, dated 21-7-1994. It has been emphatically denied that petitioner had worked with respondent from 1985 to 1990 rather petitioner had never been engaged by respondent and therefore question of petitioner having worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically stated that persons named at Serial No.1 to 24 were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P. however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of Section 25-B of Act and for said reason, there was no need to serve notice under section 25-F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under section 25-G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 21 years from alleged termination. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is reasserted that respondent had allowed 18 workers to join on 25-5-2010 in

pursuance to various Awards of this court passed on 22-12-2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal, r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 153. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, copy of letter dated 19-8-1998 Ex. PW1/B, copy of letter dated 18-12-1999 Ex. PW1/C, copy of notice dated 4-5-2002 Ex. PW1/D, copy of resolution dated 18-7-2002 Ex. PW1/E, copy of UPC and registered postal receipts Ex. PW1/F & G, copy of letter dated 18-1-2000 Ex. PW1/H. The petitioner examined Shri Sukar Deen and Gian Chand as PW2 & PW3 respectively and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21-7-1994 Ex. RW1/B, copy of office order dated 23-7-1994 Ex. RW1/C, copy of office order dated 29-11-2010 Ex. RW1/D, copy of letter dated 19-8-1998 Ex. RW1/E, copy of application dated 18-12-1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18-1-2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H, copy of mandays chart of Kusum Lata Ex. RW1/I & Ex. RW1/J and closed evidence.

7. I have heard the ld. counsel of petitioner and ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 7-7-2018 for determination which are as under:—

- (1) Whether termination of the services of petitioner by the respondents during year, 1990 is/was legal and justified as alleged?
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..OPR.
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged? ..OPR.

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	: Yes
Issue No. 2	: Discussed
Issue No. 3	: Yes

Issue No. 4	: Discussed
Relief	: Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1985 till 1990 and thus *prima facie* there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year in which petitioner was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for five years from 1985 to 1990 without any stipulation of specific months as stated above. The testimony of petitioner has been supported by PW2 Sukar Deen and PW3 Gian Chand. Both these witnesses have coaxed in the same voice that petitioner was engaged with respondent without deposing period when respondent had engaged petitioner. PW2 is a retired HPPWD official from Nurpur Division whereas PW3 is also an official of HPPWD Division Nurpur but he is also union leader. PW2 has revealed in cross-examination that he knew petitioner since childhood and was of the area of this witness which apparently shows motive of this witness to depose in favour of petitioner. Similarly, PW3 Gian Chand also appears to be interested witness as much as he happens to be union leader and petitioner was member of the union to which PW3 belongs. In cross-examination PW3 has admitted that petitioner had never worked with him and as such he had no occasion to know as to where petitioner worked. Thus, oral evidence led by petitioner is of no help to case of petitioner as there is overwhelming evidence on record led by respondent in particular mandays chart of petitioner which established that petitioner had not been engaged by respondent. Admittedly, it is not the case of petitioner that he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner from 1985 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove musterrolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent No.1 had not engaged petitioner as claimed by him from 1985 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as shown in para No. 3 of claim petition and para No. 2 of affidavit Ex. PW1/A worked under HPPWD Division Nurpur but RW1 has shown his inability to tell if any notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/departments. He has further stated in cross-examination that as per Ex. RW1/D dated 29-11-2010, only those workers had been

shown in seniority list aforesaid who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

12. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali and this fact has remained undisputed however Sub-Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex. RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub-Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he failed to prove his engagement by respondents. Enough has been emphasized by ld. counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22-12-2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen to that of petitioner had been retained and service of petitioner was illegally terminated *moreso* when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub-Division Suliali thereafter under Nurpur Division. As such, Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No.2 of affidavit in HPPWD Sub-Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of H.P. in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter re-employment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

13. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board vs. Anjali Bepari (MS)**, it has been contended that respondent had violated principle of 'Last come First go' envisaged under Section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of notice under section 25-F of Act or payment of retrenchment compensation did not arise which was *sine qua non* for valid order of termination. In view of judgment 1997 (*supra*) and aforesaid reason, respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues No. 2 & 3 are decided in negative against petitioner and in favour of respondent.

14. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1985 to 1990, and as such it cannot be held that there had been delay and laches on part of petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue No. 4 has become redundant which is decided accordingly.

Issue No. 3:

15. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief:

16. As a sequel to my findings on foregoing issues No.1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of December, 2018.

Sd/-
(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No.	: 833/2016
Date of Institution	: 24-11-2016
Date of Decision	: 15-12-2018

Shri Raghubir Singh s/o Shri Gian Chand, r/o Village Jauna Tikka Mankot, P.O. Jaunta,
District Kangra, H.P. ..Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.

2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P.

..Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the alleged termination of services of Shri Raghubir Singh s/o Shri Gian Chand, r/o Village Jauna Tikka Mankot, P.O. Jaunta, District Kangra, H.P. during year, 1990 by (i) the Executive Engineer, H.P.P.W.D., Division Nurpur, District Kangra, H.P. (ii) the Executive Engineer, H.P.P.W.D., Division Jawali, District Kangra, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after more than 22 years *vide* demand notice dated nil received in the Labour Office Kangra at Dharamshala on 04-03-2013, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view delay of more than 22 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1988 who continued to work under HPPWD Sub-Division-II and Sub-Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in lieu thereof and therefore violated Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called ‘Act’ for brevity). It is further alleged that co-workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon’ble High Court of H.P. and those juniors similarly situated had been engaged by respondent No.1 on 25-5-2010 during pendency of writ petition. It is alleged that Nurpur Sub Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that aforesaid work was also of perennial nature. It is claimed that respondent No. 2 *i.e.* Executive Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent No.1 that record *i.e.* retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No. 2.

Averment made in the claim petition further reveal that petitioner had worked in road construction alongwith several juniors retained by respondent who had been reengaged and names of 24 workmen *i.e.* Rai Singh and others had been reflected in para No. 3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with reengagement of workmen mentioned in para No. 3 of claim petition) and that petitioner had worked under several mates in construction roads leading to Defence road, Aund, Chakki, Nurpur Hospital road etc. besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of Section 25-G had reengaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent No.1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon'ble Apex Court *i.e.* AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25-G of Act was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of reinstatement with back wages, seniority and all other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was shifted/renamed as HPPWD Division Jawali vide Govt. Notification no. PBW-(A) A (1) 17/94 dated 21-7-1994. It has been emphatically denied that petitioner had worked with respondent from 1988 to 1990 rather petitioner had never been engaged by respondent and therefore question of petitioner having worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically state that persons named at Serial No.1 to 24 were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P. however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of Section 25-B of Act and for said reason, there was no need to serve notice under section 25-F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under section 25-G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 21 years from alleged termination. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is reasserted that respondent had allowed 18 workers to join on 25-5-2010 in pursuance to various Awards of this court passed on 22-12-2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal, r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 153. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, copy of letter dated 19-8-1998 Ex. PW1/B, copy of letter dated 18-12-1999 Ex. PW1/C, copy of notice dated 4-5-2002 Ex. PW1/D, copy of resolution dated 18-7-2002 Ex. PW1/E, copy of UPC and registered postal receipts Ex. PW1/F & G, copy of letter dated 18-1-2000 Ex. PW1/H. The petitioner examined Shri Sukar Deen and Gian Chand as PW2 & PW3 respectively and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21-7-1994 Ex. RW1/B, copy of office order dated 23-7-1994 Ex. RW1/C, copy of office order dated 29-11-2010 Ex. RW1/D, copy of letter dated 19-8-1998 Ex. RW1/E, copy of application dated 18-12-1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18-1-2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H, copy of mandays chart of Kusum Lata Ex. RW1/I & Ex. RW1/J and closed evidence.

7. I have heard the ld. counsel of petitioner and ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 7-7-2018 for determination which are as under:—

- (1) Whether termination of the services of petitioner by the respondents during year, 1990 is/was legal and justified as alleged?
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged? ..*OPR.*

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	: Yes
Issue No. 2	: Discusse
Issue No. 3	: Yes
Issue No. 4	: Discussed
Relief	: Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1988 till 1990 and thus *prima facie* there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year in which petitioner was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for three years from 1988 to 1990 without any stipulation of specific months as stated above. The testimony of petitioner has been supported by PW2 Sukar Deen and PW3 Gian Chand. Both these witnesses have coaxed in the same voice that petitioner was engaged with respondent without deposing period when respondent had engaged petitioner. PW2 is a retired HPPWD official from Nurpur Division whereas PW3 is also an official of HPPWD Division Nurpur but he is also union leader. PW2 has revealed in cross-examination that he knew petitioner since childhood and was of the area of this witness which apparently shows motive of this witness to depose in favour of petitioner. Similarly, PW3 Gian Chand also appears to be interested witness as much as he happens to be union leader and petitioner was member of the union to which PW3 belongs. In cross-examination PW3 has admitted that petitioner had never worked with him and as such he had no occasion to know as to where petitioner worked. Thus, oral evidence led by petitioner is of no help to case of petitioner as there is overwhelming evidence on record led by respondent in particular mandays chart of petitioner which established that petitioner had not been engaged by respondent. Admittedly, it is not the case of petitioner that he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner from 1988 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove musterrolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent No.1 had not engaged petitioner as claimed by him from 1988 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as shown in para No.3 of claim petition and para No.2 of affidavit Ex. PW1/A worked under HPPWD Division Nurpur but RW1 has shown his inability to tell if any notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29-11-2010, only those workers had been shown in seniority list aforesaid who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

12. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali and this fact has remained undisputed however Sub-Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex. RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub-Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he

failed to prove his engagement by respondents. Enough has been emphasized by ld. counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22-12-2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen to that of petitioner had been retained and service of petitioner was illegally terminated *moreso* when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub-Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub-Division Suliali thereafter under Nurpur Division. As such, Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No. 2 of affidavit in HPPWD Sub-Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of H.P. in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter re-employment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

13. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board vs. Anjali Bepari (MS)**, it has been contended that respondent had violated principle of 'Last come First go' envisaged under section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of notice under section 25-F of Act or payment of retrenchment compensation did not arise which was *sine qua non* for valid order of termination. In view of judgment 1997 (*supra*) and aforesaid reason, respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues No. 2 & 3 are decided in negative against petitioner and in favour of respondent.

14. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1988 to 1990, and as such it cannot be held that there had been delay and laches on part of petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue No.4 has become redundant which is decided accordingly.

Issue No. 3:

15. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated

that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief:

16. As a sequel to my findings on foregoing issues No.1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of December, 2018.

Sd/-
(K.K. SHARMA)
Presiding Judge
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No.	: 892/2016
Date of Institution	: 24-12-2016
Date of Decision	: 15-12-2018

Shri Uttam Chand s/o Shri Nikka Ram, r/o V.P.O. Aundh, Tehsil Nurpur, District Kangra, H.P. *..Petitioner.*

Versus

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.

2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. *..Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. Naresh Kaul, Adv.
For the Respondent(s)	: Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the alleged termination of services of Shri Uttam Chand s/o Shri Nikka Ram, r/o V.P.O. Aundh, Tehsil Nurpur, District Kangra, H.P. during year, 1992 by (i) the Executive Engineer, H.P.P.W.D. Division Nurpur, District Kangra, H.P. (ii) the Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after about 19 years *vide* demand notice dated nil received in the Labour Officer Kangra at Dharamshala on 13-06-2011, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view delay of about 19 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1985 who continued to work under HPPWD Sub-Division-II and Sub-Division-I, Nurpur till 1992 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in lieu thereof and therefore violated Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called ‘Act’ for brevity). It is further alleged that co-workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon’ble High Court of H.P. and those juniors similarly situated had been engaged by respondent No. 1 on 25-5-2010 during pendency of writ petition. It is alleged that Nurpur Sub Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that aforestated work was also of perennial nature. It is claimed that respondent No. 2 *i.e.* Executive Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent no.1 that record *i.e.* retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No. 2. Averment made in the claim petition further reveal that petitioner had worked in road construction alongwith several juniors retained by respondent who had been reengaged and names of 24 workmen *i.e.* Rai Singh and others had been reflected in para No. 3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with re-engagement of workmen mentioned in para No. 3 of claim petition) and that petitioner had worked under several mates in construction of road leading to Bod to Chakki, Hatli Jamwalan, Dhar road, Defence road etc. besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of Section 25-G had re-engaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent No.1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon’ble Apex Court *i.e.* AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25-G of Act

was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of reinstatement with back wages, seniority and all other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was shifted/renamed as HPPWD Division Jawali vide Govt. Notification No. PBW-(A) A (1) 17/94, dated 21-7-1994. It has been emphatically denied that petitioner had worked with respondent from 1985 to 1992 rather petitioner had never been engaged by respondent and therefore question of petitioner having worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically stated that persons named at serial no.1 to 24 were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P. however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of section 25-B of Act and for said reason, there was no need to serve notice under section 25-F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under Section 25-G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 21 years from alleged termination. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is reasserted that respondent had allowed 18 workers to join on 25-5-2010 in pursuance to various Awards of this court passed on 22-12-2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal, r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 153. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, copy of letter dated 19-8-1998 Ex. PW1/B, copy of letter dated 18-12-1999 Ex. PW1/C, copy of notice dated 4-5-2002 Ex. PW1/D, copy of resolution dated 18-7-2002 Ex. PW1/E, copy of UPC and registered postal receipts Ex. PW1/F & G, copy of letter dated 18-1-2000 Ex. PW1/H. The petitioner examined Shri Sukar Deen and Gian Chand as PW2 & PW3 respectively and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21-7-1994 Ex. RW1/B, copy of office order dated 23-7-1994 Ex. RW1/C, copy of office order dated 29-11-2010 Ex. RW1/D, copy of letter dated 19-8-1998 Ex. RW1/E, copy of application dated 18.12.1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18-1-2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H, copy of mandays chart of Kusum Lata Ex. RW1/I & Ex. RW1/J and closed evidence.

7. I have heard the Id. counsel of petitioner and Id. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 07-7-2018 for determination which are as under:—

- (1) Whether termination of the services of petitioner by the respondents during year, 1992 is/was legal and justified as alleged?
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged? ..*OPR.*

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:

Issue No. 1	: Yes
Issue No. 2	: Discussed
Issue No. 3	: Yes
Issue No. 4	: Discussed
Relief	: Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues no. 1, 2 and 4:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1986 till 1990 and thus *prima facie* there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year in which petitioner was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for five years from 1986 to 1990 without any stipulation of specific months as stated above. The testimony of petitioner has been supported by PW2 Sukar Deen and PW3 Gian Chand. Both these witnesses have coaxed in the same voice that petitioner was engaged with respondent without deposing period when respondent had engaged petitioner. PW2 is a retired HPPWD official from Nurpur Division whereas PW3 is also an official of HPPWD Division Nurpur but he is also union leader. PW2 has revealed in cross-examination that he knew petitioner since childhood and was of the area of this witness which apparently shows motive of this witness to depose in favour of petitioner. Similarly, PW3 Gian Chand also appears to be interested witness as much as he happens to be union leader and petitioner was member of the union to which PW3 belongs. In cross-examination PW3 has admitted that petitioner had never worked with him and as such he had

no occasion to know as to where petitioner worked. Thus, oral evidence led by petitioner is of no help to case of petitioner as there is overwhelming evidence on record led by respondent in particular mandays chart of petitioner which established that petitioner had not been engaged by respondent. Admittedly, it is not the case of petitioner that he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner from 1986 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove musterrolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent No.1 had not engaged petitioner as claimed by him from 1985 to 1992 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as shown in para No. 3 of claim petition and para No. 2 of affidavit Ex.PW1/A worked under HPPWD Division Nurpur but RW1 has shown his inability to tell if any notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29-11-2010, only those workers had been shown in seniority list aforesaid who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

12. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali and this fact has remained undisputed however Sub-Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex.RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub-Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he failed to prove his engagement by respondents. Enough has been emphasized by ld. counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22-12-2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen to that of petitioner had been retained and service of petitioner was illegally terminated moreso when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub-Division Suliali thereafter under Nurpur Division. As such, Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No. 2 of affidavit in HPPWD Sub Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of H.P. in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the

Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter re-employment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

13. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board vs. Anjali Bepari (MS)**, it has been contended that respondent had violated principle of 'Last come First go' envisaged under section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of notice under section 25-F of Act or payment of retrenchment compensation did not arise which was sine qua non for valid order of termination. In view of judgment 1997 (*supra*) and aforesaid reason, respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues No. 2 & 3 are decided in negative against petitioner and in favour of respondent.

14. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1985 to 1992, and as such it cannot be held that there had been delay and laches on part of petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue No. 4 has become redundant which is decided accordingly.

Issue No. 3:

15. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief:

17. As a sequel to my findings on foregoing issues No.1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of December, 2018.

Sd/-
(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No. : 898/201
Date of Institution : 24-12-2016
Date of Decision : 15-12-2018

Shri Brahm Dutt s/o Shri Babu Ram, r/o Village Bharnuh, P.O. Khanni, Tehsil Nurpur,
District Kangra, H.P. *..Petitioner.*

Versus

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.

2. The Executive Engineer, H.P.P.W.D. Division Jawali District Kangra, H.P. *..Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.
For the Respondent(s) : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the alleged termination of services of Sh. Brahm Dutt s/o Sh. Babu Ram, r/o Village Bharnuh, P.O. Khanni, Tehsil Nurpur, District Kangra, H.P. by the (1) Executive Engineer, H.P.P.W.D. Jawali, District Kangra, H.P. and (2) the Executive Engineer, HPPWD Nurpur, Distt. Kangra, H.P. during the year, 1990 who had worked on daily wages as beldar and has raised his industrial dispute after more than 23 years *vide* demand notice dated nil received in the office of Labour Officer Kangra at Dharamshala on 4-3-2013, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view delay of about 23 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1984 who continued to work under HPPWD Sub-Division-II and Sub-Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in lieu thereof and therefore violated Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity). It is further alleged that co-workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon'ble High Court of H.P. and those juniors similarly situated had been engaged by respondent No.1 on 25-5-2010 during pendency of writ petition. It is alleged that Nurpur Sub-Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that aforestated work was also of perennial nature. It is claimed that respondent No. 2 *i.e.* Executive Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent No.1 that record *i.e.* retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No. 2. Averment made in the claim petition further reveal that petitioner had worked in road construction along-with several juniors retained by respondent who had been re-engaged and names of 24 workmen *i.e.* Rai Singh and others had been reflected in para No. 3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with re-engagement of workmen mentioned in para No. 3 of claim petition) and that petitioner had worked under several mates in construction of road leading to HRTC workshop Jassur, Aund to Haddal road, defence road, Bod to Chakki road etc. besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of Section 25-G had re-engaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent No.1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon'ble Apex Court *i.e.* AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25 -G of Act was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of reinstatement with back wages, seniority and all other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was shifted/renamed as HPPWD Division Jawali *vide* Govt. Notification No. PBW-(A) A (1) 17/94, dated 21-7-1994. It has been emphatically denied that petitioner had worked with respondent from 1984 to 1990 rather petitioner had never been engaged by respondent and therefore question of petitioner having worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is

categorically stated that persons named at Serial No.1 to 24 were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P. however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of Section 25-B of Act and for said reason, there was no need to serve notice under section 25 -F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under Section 25 -G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 21 years from alleged termination. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is reasserted that respondent had allowed 18 workers to join on 25-5-2010 in pursuance to various Awards of this court passed on 22-12-2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal, r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 153. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, copy of letter dated 19-8-1998 Ex. PW1/B, copy of letter dated 18-12-1999 Ex. PW1/C, copy of notice dated 4-5-2002 Ex. PW1/D, copy of resolution dated 18-7-2002 Ex. PW1/E, copy of UPC and registered postal receipts Ex. PW1/F & G, copy of letter dated 18-1-2000 Ex. PW1/H. The petitioner examined Shri Sukar Deen and Gian Chand as PW2 & PW3 respectively and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21-7-1994 Ex. RW1/B, copy of office order dated 23-7-1994 Ex. RW1/C, copy of office order dated 29-11-2010 Ex. RW1/D, copy of letter dated 19-8-1998 Ex. RW1/E, copy of application dated 18-12-1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18-1-2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H, copy of mandays chart of Kusum Lata Ex. RW1/I & Ex. RW1/J and closed evidence.

7. I have heard the ld. counsel of petitioner and ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 7-7-2018 for determination which are as under:—

1. Whether termination of the services of petitioner by the respondents during year, 1990 is/was legal and justified as alleged?
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? ..OPR.

4. Whether the claim petition is bad on the ground of delay and laches as alleged? ..OPR.

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No.1	: Yes
Issue No. 2	: Discussed
Issue No. 3	: Yes
Issue No. 4	: Discussed
Relief	: Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1984 till 1990 and thus *prima facie* there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year in which petitioner was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for five years from 1984 to 1990 without any stipulation of specific months as stated above. The testimony of petitioner has been supported by PW2 Sukar Deen and PW3 Gian Chand. Both these witnesses have coaxed in the same voice that petitioner was engaged with respondent without deposing period when respondent had engaged petitioner. PW2 is a retired HPPWD official from Nurpur Division whereas PW3 is also an official of HPPWD Division Nurpur but he is also union leader. PW2 has revealed in cross-examination that he knew petitioner since childhood and was of the area of this witness which apparently shows motive of this witness to depose in favour of petitioner. Similarly, PW3 Gian Chand also appears to be interested witness as much as he happens to be union leader and petitioner was member of the union to which PW3 belongs. In cross-examination PW3 has admitted that petitioner had never worked with him and as such he had no occasion to know as to where petitioner worked. Thus, oral evidence led by petitioner is of no help to case of petitioner as there is overwhelming evidence on record led by respondent in particular mandays chart of petitioner which established that petitioner had not been engaged by respondent. Admittedly, it is not the case of petitioner that he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner from 1984 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove musterrolls for the period which he had worked or any appointment

letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent No.1 had not engaged petitioner as claimed by him from 1984 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as shown in para No. 3 of claim petition and para No. 2 of affidavit Ex.PW1/A worked under HPPWD Division Nurpur but RW1 has shown his inability to tell if any notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29-11-2010, only those workers had been shown in seniority list aforesaid who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

12. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali and this fact has remained undisputed however Sub-Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex. RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he failed to prove his engagement by respondents. Enough has been emphasized by ld. counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22-12-2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen to that of petitioner had been retained and service of petitioner was illegally terminated moreso when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub-Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub-Division Suliali thereafter under Nurpur Division. As such, Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No. 2 of affidavit in HPPWD Sub-Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of H.P. in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter re-employment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

13. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board vs. Anjali Bepari (MS)**, it has been contended that respondent had violated principle of 'Last come First go' envisaged under section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had

been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of notice under section 25-F of Act or payment of retrenchment compensation did not arise which was *sine qua non* for valid order of termination. In view of judgment 1997 (*supra*) and aforesaid reason, respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues No. 2 & 3 are decided in negative against petitioner and in favour of respondent.

14. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1984 to 1990, and as such it cannot be held that there had been delay and laches on part of petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue no.4 has become redundant which is decided accordingly.

Issue No. 3:

15. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief:

16. As a sequel to my findings on foregoing issues No.1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of December, 2018.

Sd/-
(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No. : 829/2016
Date of Institution : 24-11-2016
Date of Decision : 15-12-2018

Shri Prabhat Singh s/o Shri Gujjar Singh, r/o Village and Post Office Haddal, Tehsil Nurpur, District Kangra, H.P. ..Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.

2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P.

..Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.
For the Respondent(s) : Sh. Sanjeev Singh Rana, D.A.

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Prabhat Singh s/o Shri Gujjar Singh, r/o Village and Post Office Haddal, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (1) The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P. (2) The Executive Engineer, H.P.P.W.D. Division, Jawali, Tehsil Nurpur, District Kangra, H.P., who had worked on daily wages and has raised his industrial dispute after more than 21 years *vide* demand notice dated nil received on 29-11-2012, without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, keeping in view of delay of more than 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1985 who continued to work under HPPWD Sub-Division-II and Sub-Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in lieu thereof and therefore violated Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called ‘Act’ for brevity). It is further alleged that co-workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon’ble High Court of H.P. and those juniors similarly situated had been engaged by

respondent no.1 on 25-5-2010 during pendency of writ petition. It is alleged that Nurpur Sub Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that aforestated work was also of perennial nature. It is claimed that respondent No. 2 *i.e.* Executive Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent no.1 that record *i.e.* retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No. 2. Averment made in the claim petition further reveal that petitioner had worked in road construction along with several juniors retained by respondent who had been re-engaged and names of 24 workmen *i.e.* Rai Singh and others had been reflected in para No. 3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with re-engagement of workmen mentioned in para No. 3 of claim petition) and that petitioner had worked under several mates in construction of road leading to Defence road, Aund, Chakki, Nurpur Hospital road etc. besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of Section 25-G had re-engaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent No.1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon'ble Apex Court *i.e.* AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25-G of Act was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of reinstatement with back wages, seniority and all other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was shifted/renamed as HPPWD Division Jawali *vide* Govt. Notification No. PBW-(A) A (1) 17/94 dated 21-7-1994. It has been emphatically denied that petitioner had worked with respondent from 1985 to 1990 rather petitioner had never been engaged by respondent and therefore question of petitioner having worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically stated that persons named at Serial No.1 to 24 were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P. however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of Section 25-B of Act and for said reason, there was no need to serve notice under section 25-F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under section 25-G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 21 years from alleged termination. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is reasserted that respondent had allowed 18 workers to join on 25-5-2010 in pursuance to various Awards of this court passed on 22-12-2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal, r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was junior to petitioner who had been

engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 153. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, copy of letter dated 19-8-1998 Ex. PW1/B, copy of letter dated 18-12-1999 Ex. PW1/C, copy of notice dated 4-5-2002 Ex. PW1/D, copy of resolution dated 18-7-2002 Ex. PW1/E, copy of UPC and registered postal receipts Ex. PW1/F & G, copy of letter dated 18-1-2000 Ex. PW1/H. The petitioner examined Shri Sukar Deen and Gian Chand as PW2 & PW3 respectively and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21-7-1994 Ex. RW1/B, copy of office order dated 23-7-1994 Ex. RW1/C, copy of office order dated 29-11-2010 Ex. RW1/D, copy of letter dated 19-8-1998 Ex. RW1/E, copy of application dated 18-12-1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18-1-2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H, copy of mandays chart of Kusum Lata Ex. RW1/I & Ex. RW1/J and closed evidence.

7. I have heard the ld. counsel of petitioner and ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 7-7-2018 for determination which are as under:—

- (1) Whether termination of the services of petitioner by the respondents during year, 1990 is/was legal and justified as alleged?
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged? .. *OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:

Issue No. 1	: Yes
Issue No. 2	: Discussed
Issue No. 3	: Yes
Issue No. 4	: Discussed
Relief	: Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1985 till 1990 and thus *prima facie* there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year in which petitioner was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for five years from 1985 to 1990 without any stipulation of specific months as stated above. The testimony of petitioner has been supported by PW2 Sukar Deen and PW3 Gian Chand. Both these witnesses have coaxed in the same voice that petitioner was engaged with respondent without deposing period when respondent had engaged petitioner. PW2 is a retired HPPWD official from Nurpur Division whereas PW3 is also an official of HPPWD Division Nurpur but he is also union leader. PW2 has revealed in cross-examination that he knew petitioner since childhood and was of the area of this witness which apparently shows motive of this witness to depose in favour of petitioner. Similarly, PW3 Gian Chand also appears to be interested witness as much as he happens to be union leader and petitioner was member of the union to which PW3 belongs. In cross-examination PW3 has admitted that petitioner had never worked with him and as such he had no occasion to know as to where petitioner worked. Thus, oral evidence led by petitioner is of no help to case of petitioner as there is overwhelming evidence on record led by respondent in particular mandays chart of petitioner which established that petitioner had not been engaged by respondent. Admittedly, it is not the case of petitioner that he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner from 1985 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove musterrolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent No.1 had not engaged petitioner as claimed by him from 1985 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as shown in para No. 3 of claim petition and para No. 2 of affidavit Ex. PW1/A worked under HPPWD Division Nurpur but RW1 has shown his inability to tell if any notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29-11-2010, only those workers had been shown in seniority list aforesaid who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

12. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali and this fact has remained undisputed however Sub Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex. RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he failed to prove his engagement by respondents. Enough has been emphasized by ld. counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22-12-2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen to that of petitioner had been retained and service of petitioner was illegally terminated *moreso* when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub-Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub-Division Suliali thereafter under Nurpur Division. As such, Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No. 2 of affidavit in HPPWD Sub Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of H.P. in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter re-employment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

13. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board vs. Anjali Bepari (MS)**, it has been contended that respondent had violated principle of 'Last come First go' envisaged under section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of notice under section 25-F of Act or payment of retrenchment compensation did not arise which was *sine qua non* for valid order of termination. In view of judgment 1997 (*supra*) and aforesaid reason, respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues No. 2 & 3 are decided in negative against petitioner and in favour of respondent.

14. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1985 to 1990, and as such it cannot be held that there had been delay and laches on part of

petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue No.4 has become redundant which is decided accordingly.

Issue No. 3:

15. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief:

16. As a sequel to my findings on foregoing issues No.1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of December, 2018.

Sd/-
(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No.	: 821/201
Date of Institution	: 24-11-2016
Date of Decision	: 15-12-2018

Shri Raghubir Singh s/o Shri Mansa Ram, r/o VPO Aund, Tehsil Nurpur, District Kangra, H.P. *..Petitioner.*

Versus

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.

2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P.

..Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the alleged termination of services of Shri Raghubir Singh s/o Shri Mansa Ram, r/o V.P.O. Aund, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (i) the Executive Engineer, H.P.P.W.D., Division Nurpur, District Kangra, H.P. (ii) the Executive Engineer, H.P.P.W.D., Division Jawali, District Kangra, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after more than 22 years *vide* demand notice dated nil received in the Labour Office Kangra at Dharamshala on 04-03-2013, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view delay of more than 22 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1985 who continued to work under HPPWD Sub Division-II and Sub-Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in lieu thereof and therefore violated Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called ‘Act’ for brevity). It is further alleged that co-workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon’ble High Court of H.P. and those juniors similarly situated had been engaged by respondent No. 1 on 25-5-2010 during pendency of writ petition. It is alleged that Nurpur Sub Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that aforestated work was also of perennial nature. It is claimed that respondent No. 2 *i.e.* Executive Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent No.1 that record *i.e.* retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No. 2. Averment made in the claim petition further reveal that petitioner had worked in road construction alongwith several juniors retained by respondent who had been re-engaged and names of 24 workmen *i.e.* Rai Singh and others had been reflected in para No. 3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with re-engagement of workmen mentioned in para No. 3 of claim petition) and that petitioner had worked under several mates

in construction of road leading to Defence road, Aund, Chakki, Nurpur Hospital road etc. besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of Section 25-G had reengaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent No.1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon'ble Apex Court *i.e.* AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25-G of Act was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of reinstatement with back wages, seniority and all other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was shifted/renamed as HPPWD Division Jawali *vide* Govt. Notification No. PBW-(A) A (1) 17/94, dated 21-7-1994. It has been emphatically denied that petitioner had worked with respondent from 1985 to 1990 rather petitioner had never been engaged by respondent and therefore question of petitioner having worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically stated that persons named at Serial No.1 to 24 were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P. however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of Section 25-B of Act and for said reason, there was no need to serve notice under section 25 -F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under section 25 -G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 21 years from alleged termination. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is reasserted that respondent had allowed 18 workers to join on 25-5-2010 in pursuance to various Awards of this court passed on 22-12-2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal, r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 153 . Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, copy of letter dated 19-8-1998 Ex. PW1/B, copy of letter dated 18-12-1999 Ex. PW1/C, copy of notice dated 4-5-2002 Ex. PW1/D, copy of resolution dated 18-7-2002 Ex. PW1/E, copy of UPC and registered postal receipts Ex. PW1/F & G, copy of letter dated 18-1-2000 Ex. PW1/H. The

petitioner examined Shri Sukar Deen and Gian Chand as PW2 & PW3 respectively and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21-7-1994 Ex. RW1/B, copy of office order dated 23-7-1994 Ex. RW1/C, copy of office order dated 29-11-2010 Ex. RW1/D, copy of letter dated 19-8-1998 Ex. RW1/E, copy of application dated 18-12-1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18-1-2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H, copy of mandays chart of Kusum Lata Ex. RW1/I & Ex. RW1/J and closed evidence.

7. I have heard the Id. counsel of petitioner and Id. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 7-7-2018 for determination which are as under:—

- (1) Whether termination of the services of petitioner by the respondents during year, 1990 is/was legal and justified as alleged?
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..OPR.
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged? ..OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:

Issue No. 1	: Yes
Issue No. 2	: Discussed
Issue No. 3	: Yes
Issue No. 4	: Discussed
Relief	: Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1985 till 1990 and thus *prima facie* there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year

in which petitioner was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for five years from 1985 to 1990 without any stipulation of specific months as stated above. The testimony of petitioner has been supported by PW2 Sukar Deen and PW3 Gian Chand. Both these witnesses have coaxed in the same voice that petitioner was engaged with respondent without deposing period when respondent had engaged petitioner. PW2 is a retired HPPWD official from Nurpur Division whereas PW3 is also an official of HPPWD Division Nurpur but he is also union leader. PW2 has revealed in cross-examination that he knew petitioner since childhood and was of the area of this witness which apparently shows motive of this witness to depose in favour of petitioner. Similarly, PW3 Gian Chand also appears to be interested witness as much as he happens to be union leader and petitioner was member of the union to which PW3 belongs. In cross-examination PW3 has admitted that petitioner had never worked with him and as such he had no occasion to know as to where petitioner worked. Thus, oral evidence led by petitioner is of no help to case of petitioner as there is overwhelming evidence on record led by respondent in particular mandays chart of petitioner which established that petitioner had not been engaged by respondent. Admittedly, it is not the case of petitioner that he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner from 1985 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove musterrolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent No.1 had not engaged petitioner as claimed by him from 1985 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as shown in para no. 3 of claim petition and para No. 2 of affidavit Ex. PW1/A worked under HPPWD Division Nurpur but RW1 has shown his inability to tell if any notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29-11-2010, only those workers had been shown in seniority list aforesaid who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

12. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali and this fact has remained undisputed however Sub-Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex. RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub-Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he failed to prove his engagement by respondents. Enough has been emphasized by ld. counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22-12-2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen to that of petitioner had been retained and service of petitioner was illegally terminated *moreso* when petitioner has failed to prove his

engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub Division Suliali thereafter under Nurpur Division. As such, Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No. 2 of affidavit in HPPWD Sub-Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of H.P. in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter re-employment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

13. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board vs. Anjali Bepari (MS)**, it has been contended that respondent had violated principle of 'Last come First go' envisaged under section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of notice under section 25-F of Act or payment of retrenchment compensation did not arise which was *sine qua non* for valid order of termination. In view of judgment 1997 (*supra*) and aforesaid reason, respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues No. 2 & 3 are decided in negative against petitioner and in favour of respondent.

14. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1985 to 1990, and as such it cannot be held that there had been delay and laches on part of petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue no. 4 has become redundant which is decided accordingly.

Issue No. 3:

15. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That

being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief:

16. As a sequel to my findings on foregoing issues No.1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of December, 2018.

Sd/-
(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No.	: 804/2016
Date of Institution	: 24-11-2016
Date of Decision	: 15-12-2018

Shri Balwant Singh s/o Shri Kashmiro Ram, r/o Village and P.O. Khawara, Tehsil Nurpur, District Kangra, H.P. *..Petitioner.*

Versus

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.

2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P.

..Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. Naresh Kaul, Adv.
For the Respondent(s)	: Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the alleged termination of services of Shri Balwant Singh s/o Shri Kashmiro Ram, r/o Village and P.O. Khawara, Tehsil Nurpur, District Kangra, H.P. during 1990 by (i) the Executive Engineer, Nurpur Division, HPPWD Nurpur, District Kangra, H.P. (ii) The Executive Engineer, Jawali Division, HPPWD Jawali, District Kangra, H.P., who had worked on daily wages basis as beldar and has raised his industrial dispute after about 23 years *vide* demand notice dated nil received in the office of Labour Officer Dharamshala on 04-03-2013 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of delay of about 23 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1988 who continued to work under HPPWD Sub-Division-II and Sub-Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in lieu thereof and therefore violated Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called ‘Act’ for brevity). It is further alleged that co-workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon’ble High Court of H.P. and those juniors similarly situated had been engaged by respondent No.1 on 25-5-2010 during pendency of writ petition. It is alleged that Nurpur Sub- Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that aforestated work was also of perennial nature. It is claimed that respondent No. 2 *i.e.* Executive Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent no.1 that record *i.e.* retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No. 2. Averment made in the claim petition further reveal that petitioner had worked in road construction alongwith several juniors retained by respondent who had been re-engaged and names of 24 workmen *i.e.* Rai Singh and others had been reflected in para No. 3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with re-engagement of workmen mentioned in para No. 3 of claim petition) and that petitioner had worked under several mates in construction of road leading to Defence road, Aund, Chakki, Nurpur Hospital road etc. besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of Section 25-G had re-engaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent No.1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon’ble Apex Court *i.e.* AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25-G of Act was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of reinstatement with back wages, seniority and all other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was shifted/renamed as HPPWD Division Jawali *vide* Govt. Notification No. PBW-(A) A (1) 17/94, dated 21-7-1994. It has been emphatically denied that petitioner had worked with respondent from 1988 to 1990 rather petitioner had never been engaged by respondent and therefore question of petitioner having worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically stated that persons named at serial No.1 to 24 were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P. however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of Section 25-B of Act and for said reason, there was no need to serve notice under section 25-F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under Section 25-G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 21 years from alleged termination. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is reasserted that respondent had allowed 18 workers to join on 25-5-2010 in pursuance to various Awards of this court passed on 22-12-2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal, r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 1 53. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, copy of letter dated 19-8-1998 Ex. PW1/B, copy of letter dated 18-12-1999 Ex. PW1/C, copy of notice dated 4-5-2002 Ex. PW1/D, copy of resolution dated 18-7-2002 Ex. PW1/E, copy of UPC and registered postal receipts Ex. PW1/F & G, copy of letter dated 18-1-2000 Ex. PW1/H. The petitioner examined Shri Sukar Deen and Gian Chand as PW2 & PW3 respectively and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21-7-1994 Ex. RW1/B, copy of office order dated 23-7-1994 Ex. RW1/C, copy of office order dated 29-11-2010 Ex. RW1/D, copy of letter dated 19-8-1998 Ex. RW1/E, copy of application dated 18-12-1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18-1-2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H, copy of mandays chart of Kusum Lata Ex. RW1/I & Ex. RW1/J and closed evidence.

7. I have heard the Id. counsel of petitioner and Id. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 7-7-2018 for determination which are as under:—

- (1) Whether termination of the services of petitioner by the respondents during year, 1990 is/was legal and justified as alleged?
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged? ..*OPR.*

Relief

9. For the reasons detailed here under, my findings on the above issues are as follows:

Issue No. 1	: Yes
Issue No. 2	: Discussed
Issue No. 3	: Yes
Issue No. 4	: Discussed
Relief	: Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1988 till 1990 and thus *prima facie* there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year in which petitioner was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for five years from 1988 to 1990 without any stipulation of specific months as stated above. The testimony of petitioner has been supported by PW2 Sukar Deen and PW3 Gian Chand. Both these witnesses have coaxed in the same voice that petitioner was engaged with respondent without deposing period when respondent had engaged petitioner. PW2 is a retired HPPWD official from Nurpur Division whereas PW3 is also an official of HPPWD Division Nurpur but he is also union leader. PW2 has revealed in cross-examination that he knew petitioner since childhood and was of the area of this witness which apparently shows motive of this witness to depose in favour of petitioner. Similarly, PW3 Gian Chand also appears to be interested witness as much as he happens to be union leader and petitioner was member of the union to which PW3 belongs. In cross-examination PW3 has admitted that petitioner had never worked with him and as such he had no occasion to know as to where petitioner worked. Thus, oral evidence led by petitioner is

of no help to case of petitioner as there is overwhelming evidence on record led by respondent in particular mandays chart of petitioner which established that petitioner had not been engaged by respondent. Admittedly, it is not the case of petitioner that he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner from 1988 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove musterrolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent no.1 had not engaged petitioner as claimed by him from 1988 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as shown in para No. 3 of claim petition and para No. 2 of affidavit Ex.PW1/A worked under HPPWD Division Nurpur but RW1 has shown his inability to tell if any notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29-11-2010, only those workers had been shown in seniority list aforesaid who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

12. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali and this fact has remained undisputed however Sub Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex. RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub-Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he failed to prove his engagement by respondents. Enough has been emphasized by ld. counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22-12-2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen to that of petitioner had been retained and service of petitioner was illegally terminated moreso when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub-Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub-Division Suliali thereafter under Nurpur Division. As such, Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No. 2 of affidavit in HPPWD Sub-Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of H.P. in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish

retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter re-employment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

13. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board vs. Anjali Bepari (MS)**, it has been contended that respondent had violated principle of 'Last come First go' envisaged under section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of notice under section 25-F of Act or payment of retrenchment compensation did not arise which was *sine qua non* for valid order of termination. In view of judgment 1997 (*supra*) and aforesaid reason, respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues No. 2 & 3 are decided in negative against petitioner and in favour of respondent.

14. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1988 to 1990, and as such it cannot be held that there had been delay and laches on part of petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue No.4 has become redundant which is decided accordingly.

Issue No. 3:

15. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief:

16. As a sequel to my findings on foregoing issues No.1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of December, 2018.

Sd/-
(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No. : 811/2016
Date of Institution : 24-11-201
Date of Decision : 15-12-2018

Shri Chiragdeen s/o Shri Yuvshah, r/o Village Malkwal, P.O. Khawara, Tehsil Nurpur,
District Kangra, H.P. *..Petitioner.*

Versus

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.

2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P...
..Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.
For the Respondent(s) : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether termination of services of Shri Chiragdeen s/o Shri Yuvshah, r/o Village Malkwal, P.O. Khawara, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (1) The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P. (2) The Executive Engineer, H.P.P.W.D. Division, Jawali, Tehsil Nurpur, District Kangra, H.P., who had worked on daily wages and has raised his industrial dispute after about 22 years *vide* demand notice dated nil received on 29-11-2012, without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, keeping in view of delay of about 22 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1985 who continued to work under HPPWD Sub-Division-II and Sub-Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in lieu thereof and therefore violated Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity). It is further alleged that co-workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon'ble High Court of H.P. and those juniors similarly situated had been engaged by respondent No.1 on 25-5-2010 during pendency of writ petition. It is alleged that Nurpur Sub Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that aforestated work was also of perennial nature. It is claimed that respondent No. 2 *i.e.* Executive Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent no.1 that record *i.e.* retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No. 2. Averment made in the claim petition further reveal that petitioner had worked in road construction alongwith several juniors retained by respondent who had been re-engaged and names of 24 workmen *i.e.* Rai Singh and others had been reflected in para No. 3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with re-engagement of workmen mentioned in para No. 3 of claim petition) and that petitioner had worked under several mates in construction of road leading to Defence road, Aund, Chakki, Nurpur Hospital road etc. besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of Section 25-G had reengaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent No.1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon'ble Apex Court *i.e.* AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25-G of Act was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of reinstatement with back wages, seniority and all other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was shifted/renamed as HPPWD Division Jawali *vide* Govt. Notification No. PBW-(A) A (1) 17/94, dated 21-7-1994. It has been emphatically denied that petitioner had worked with respondent from 1985 to 1990 rather petitioner had never been engaged by respondent and therefore question of petitioner having worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically stated that persons named at Serial No.1 to 24 were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P. however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of Section 25-B of Act and for said reason, there was no need to serve notice

under section 25 -F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under section 25 -G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 21 years from alleged termination. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is reasserted that respondent had allowed 18 workers to join on 25-5-2010 in pursuance to various Awards of this court passed on 22-12-2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal, r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 153. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, copy of letter dated 19-8-1998 Ex. PW1/B, copy of letter dated 18-12-1999 Ex. PW1/C, copy of notice dated 4-5-2002 Ex. PW1/D, copy of resolution dated 18-7-2002 Ex. PW1/E, copy of UPC and registered postal receipts Ex. PW1/F & G, copy of letter dated 18-1-2000 Ex. PW1/H. The petitioner examined Shri Sukar Deen and Gian Chand as PW2 & PW3 respectively and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21-7-1994 Ex. RW1/B, copy of office order dated 23-7-1994 Ex. RW1/C, copy of office order dated 29-11-2010 Ex. RW1/D, copy of letter dated 19-8-1998 Ex. RW1/E, copy of application dated 18-12-1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18-1-2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H, copy of mandays chart of Kusum Lata Ex. RW1/I & Ex. RW1/J and closed evidence.

7. I have heard the ld. counsel of petitioner and ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 7-7-2018 for determination which are as under:—

- (1) Whether termination of the services of petitioner by the respondents during year, 1990 is/was legal and justified as alleged?
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..OPR.
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged? ..OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1	: Yes
Issue No. 2	: Discussed
Issue No. 3	: Yes
Issue No. 4	: Discussed
Relief	: Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1985 till 1990 and thus *prima facie* there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year in which petitioner was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for five years from 1985 to 1990 without any stipulation of specific months as stated above. The testimony of petitioner has been supported by PW2 Sukar Deen and PW3 Gian Chand. Both these witnesses have coaxed in the same voice that petitioner was engaged with respondent without deposing period when respondent had engaged petitioner. PW2 is a retired HPPWD official from Nurpur Division whereas PW3 is also an official of HPPWD Division Nurpur but he is also union leader. PW2 has revealed in cross-examination that he knew petitioner since childhood and was of the area of this witness which apparently shows motive of this witness to depose in favour of petitioner. Similarly, PW3 Gian Chand also appears to be interested witness as much as he happens to be union leader and petitioner was member of the union to which PW3 belongs. In cross-examination PW3 has admitted that petitioner had never worked with him and as such he had no occasion to know as to where petitioner worked. Thus, oral evidence led by petitioner is of no help to case of petitioner as there is overwhelming evidence on record led by respondent in particular mandays chart of petitioner which established that petitioner had not been engaged by respondent. Admittedly, it is not the case of petitioner that he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner from 1985 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove musterrolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent No.1 had not engaged petitioner as claimed by him from

1985 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as shown in para No. 3 of claim petition and para No. 2 of affidavit Ex.PW1/A worked under HPPWD Division Nurpur but RW1 has shown his inability to tell if any notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29-11-2010, only those workers had been shown in seniority list aforesaid who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

12. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali and this fact has remained undisputed however Sub Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex.RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he failed to prove his engagement by respondents. Enough has been emphasized by ld. counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22-12-2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen to that of petitioner had been retained and service of petitioner was illegally terminated moreso when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub- Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub-Division Suliali thereafter under Nurpur Division. As such, Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No.2 of affidavit in HPPWD Sub Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of H.P. in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter re-employment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

13. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board vs. Anjali Bepari (MS)**, it has been contended that respondent had violated principle of 'Last come First go' envisaged under section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by

petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of notice under section 25-F of Act or payment of retrenchment compensation did not arise which was sine *qua* non for valid order of termination. In view of judgment 1997 (*supra*) and aforesaid reason, respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues No. 2 & 3 are decided in negative against petitioner and in favour of respondent.

14. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1985 to 1990, and as such it cannot be held that there had been delay and laches on part of petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue No.4 has become redundant which is decided accordingly.

Issue No. 3:

15. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief:

16. As a sequel to my findings on foregoing issues No.1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

17. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the officialgazette.

20. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of December, 2018.

Sd/-
(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No. : 807/2016
Date of Institution : 24-11-2016
Date of Decision : 15-12-2018

Shri Rehmat Ali s/o Shri Suarlideen, r/o Village and P.O. Aund, Tehsil Nurpur, District Kangra, H.P. ..Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.

2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. ..Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.
For the Respondent(s) : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the alleged termination of services of Shri Rehmat Ali s/o Shri Suarlideen, r/o Village and P.O. Aund, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (i) the Executive Engineer, H.P.P.W.D. Division Nurpur, District Kangra, H.P. (ii) the Executive Engineer, H.P.P.W.D., Division Jawali, District Kangra, H.P., who had worked on daily wages basis as beldar and has raised his industrial dispute after about 22 years *vide* demand notice dated nil received in the office of Labour Officer Dharamshala on 04-03-2013 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of delay of about 22 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1985 who continued to work under HPPWD Sub-Division-II and Sub-Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in lieu thereof and therefore violated Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called ‘Act’ for brevity). It is further alleged that co-

workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon'ble High Court of H.P. and those juniors similarly situated had been engaged by respondent No.1 on 25-5-2010 during pendency of writ petition. It is alleged that Nurpur Sub- Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that aforestated work was also of perennial nature. It is claimed that respondent No. 2 *i.e.* Executive Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent no.1 that record *i.e.* retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No. 2. Averment made in the claim petition further reveal that petitioner had worked in road construction alongwith several juniors retained by respondent who had been reengaged and names of 24 workmen *i.e.* Rai Singh and others had been reflected in para No. 3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with re-engagement of workmen mentioned in para No. 3 of claim petition) and that petitioner had worked under several mates in construction of road leading to Defence road, Aund, Chakki, Nurpur Hospital road etc. besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of Section 25-G had re-engaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent No.1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon'ble Apex Court *i.e.* AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25-G of Act was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of reinstatement with back wages, seniority and all other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was shifted/renamed as HPPWD Division Jawali *vide* Govt. Notification no.PBW-(A) A (1) 17/94, dated 21-7-1994. It has been emphatically denied that petitioner had worked with respondent from 1985 to 1990 rather petitioner had never been engaged by respondent and therefore question of petitioner having worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically stated that persons named at Serial No. 1 to 24 were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P. however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of Section 25-B of Act and for said reason, there was no need to serve notice under section 25 -F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under section 25 -G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 21 years from alleged termination. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is reasserted that respondent had allowed 18 workers to join on 25-5-2010 in

pursuance to various Awards of this court passed on 22-12-2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal, r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 153. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, copy of letter dated 19-8-1998 Ex. PW1/B, copy of letter dated 18-12-1999 Ex. PW1/C, copy of notice dated 4-5-2002 Ex. PW1/D, copy of resolution dated 18-7-2002 Ex. PW1/E, copy of UPC and registered postal receipts Ex. PW1/F & G, copy of letter dated 18-1-2000 Ex. PW1/H. The petitioner examined Shri Sukar Deen and Gian Chand as PW2 & PW3 respectively and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21-7-1994 Ex. RW1/B, copy of office order dated 23-7-1994 Ex. RW1/C, copy of office order dated 29-11-2010 Ex. RW1/D, copy of letter dated 19-8-1998 Ex. RW1/E, copy of application dated 18-12-1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18-1-2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H, copy of mandays chart of Kusum Lata Ex. RW1/I & Ex. RW1/J and closed evidence.

7. I have heard the ld. counsel of petitioner and ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 7-7-2018 for determination which are as under:—

- (1) Whether termination of the services of petitioner by the respondents during year, 1990 is/was legal and justified as alleged?
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..OPR.
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged? ..OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:

Issue No.1	: Yes
Issue No.2	: Discussed
Issue No.3	: Yes
Issue No.4	: Discussed

Relief

: Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1985 till 1990 and thus *prima facie* there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year in which petitioner was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for five years from 1985 to 1990 without any stipulation of specific months as stated above. The testimony of petitioner has been supported by PW2 Sukar Deen and PW3 Gian Chand. Both these witnesses have coaxed in the same voice that petitioner was engaged with respondent without deposing period when respondent had engaged petitioner. PW2 is a retired HPPWD official from Nurpur Division whereas PW3 is also an official of HPPWD Division Nurpur but he is also union leader. PW2 has revealed in cross-examination that he knew petitioner since childhood and was of the area of this witness which apparently shows motive of this witness to depose in favour of petitioner. Similarly, PW3 Gian Chand also appears to be interested witness as much as he happens to be union leader and petitioner was member of the union to which PW3 belongs. In cross-examination PW3 has admitted that petitioner had never worked with him and as such he had no occasion to know as to where petitioner worked. Thus, oral evidence led by petitioner is of no help to case of petitioner as there is overwhelming evidence on record led by respondent in particular mandays chart of petitioner which established that petitioner had not been engaged by respondent. Admittedly, it is not the case of petitioner that he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner from 1985 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove musterrolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent No.1 had not engaged petitioner as claimed by him from 1985 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as shown in para No.3 of claim petition and para No.2 of affidavit Ex.PW1/A worked under HPPWD Division Nurpur but RW1 has shown his inability to tell if any notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29-11-2010, only those workers had been shown in seniority list aforesaid who had been engaged in 2010 and that none was

engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

12. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali and this fact has remained undisputed however Sub-Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex.RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub-Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he failed to prove his engagement by respondents. Enough has been emphasized by ld. counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22-12-2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen to that of petitioner had been retained and service of petitioner was illegally terminated *moreso* when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub-Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub-Division Suliali thereafter under Nurpur Division. As such, Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No.2 of affidavit in HPPWD Sub-Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of H.P. in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter re-employment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

13. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board vs. Anjali Bepari (MS)**, it has been contended that respondent had violated principle of 'Last come First go' envisaged under section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of notice under Section 25-F of Act or payment of retrenchment compensation did not arise which was *sine qua non* for valid order of termination. In view of judgment 1997 (*supra*) and aforesaid reason, respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues No. 2 & 3 are decided in negative against petitioner and in favour of respondent.

14. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1985 to 1990, and as such it cannot be held that there had been delay and laches on part of petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue No.4 has become redundant which is decided accordingly.

Issue No. 3:

15. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief:

16. As a sequel to my findings on foregoing issues No.1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of December, 2018.

Sd/-
(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No.	: 831/2016
Date of Institution	: 24-11-2016
Date of Decision	: 15-12-2018

Shri Harbans Singh s/o Shri Bhag Singh, r/o Village Danna, P.O. Khawara, Tehsil Nurpur, District Kangra, H.P. *..Petitioner.*

Versus

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.

2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P.

..Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the alleged termination of services of Shri Harbans Singh s/o Shri Bhag Singh, r/o Village Danna, P.O. Khawara, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (i) the Executive Engineer, H.P.P.W.D. Division Nurpur, District Kangra, H.P. (ii) the Executive Engineer, H.P.P.W.D., Division Jawali, District Kangra, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after about 22 years *vide* demand notice dated nil received in the Labour Office Kangra at Dharamshala on 13-06-2012, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view delay of about 22 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1988 who continued to work under HPPWD Sub-Division-II and Sub-Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in lieu thereof and therefore violated Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called ‘Act’ for brevity). It is further alleged that co-workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon’ble High Court of H.P. and those juniors similarly situated had been engaged by respondent No.1 on 25-5-2010 during pendency of writ petition. It is alleged that Nurpur Sub- Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that aforesaid work was also of perennial nature. It is claimed that respondent No. 2 *i.e.* Executive Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent No.1 that record *i.e.* retrenchment and mandays of

persons mentioned in claim petition had been shifted to respondent No. 2. Averment made in the claim petition further reveal that petitioner had worked in road construction alongwith several juniors retained by respondent who had been re-engaged and names of 24 workmen *i.e.* Rai Singh and others had been reflected in para No. 3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with re-engagement of workmen mentioned in para No. 3 of claim petition) and that petitioner had worked under several mates in construction of road leading to Defence road, Aund, Chakki, Nurpur Hospital road etc. besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of Section 25-G had re-engaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent No. 1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon'ble Apex Court *i.e.* AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25-G of Act was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of reinstatement with back wages, seniority and all other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was shifted/renamed as HPPWD Division Jawali *vide* Govt. Notification no.PBW-(A) A (1) 17/94, dated 21-7-1994. It has been emphatically denied that petitioner had worked with respondent from 1988 to 1990 rather petitioner had never been engaged by respondent and therefore question of petitioner having worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically stated that persons named at serial No.1 to 24 were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P. however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of Section 25-B of Act and for said reason, there was no need to serve notice under section 25 -F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under section 25 -G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 21 years from alleged termination. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is reasserted that respondent had allowed 18 workers to join on 25-5-2010 in pursuance to various Awards of this court passed on 22-12-2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 153. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, copy of letter dated 19-8-1998 Ex. PW1/B, copy of letter dated 18-12-1999 Ex. PW1/C, copy of notice dated 4-5-2002 Ex. PW1/D, copy of resolution dated 18-7-2002 Ex. PW1/E, copy of UPC and registered postal receipts Ex. PW1/F & G, copy of letter dated 18-1-2000 Ex. PW1/H. The petitioner examined Shri Sukar Deen and Gian Chand as PW2 & PW3 respectively and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21-7-1994 Ex. RW1/B, copy of office order dated 23-7-1994 Ex. RW1/C, copy of office order dated 29-11-2010 Ex. RW1/D, copy of letter dated 19-8-1998 Ex. RW1/E, copy of application dated 18-12-1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18-1-2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H, copy of mandays chart of Kusum Lata Ex. RW1/I & Ex. RW1/J and closed evidence.

7. I have heard the Id. counsel of petitioner and Id. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 7-7-2018 for determination which are as under:—

- (1) Whether termination of the services of petitioner by the respondents during year, 1990 is/was legal and justified as alleged?
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? *..OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? *..OPR.*
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged? *..OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1	: Yes
Issue No. 2	: Discussed
Issue No. 3	: Yes
Issue No. 4	: Discussed
Relief	: Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1988 till 1990 and thus *prima facie* there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year in which petitioner was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for five years from 1988 to 1990 without any stipulation of specific months as stated above. The testimony of petitioner has been supported by PW2 Sukar Deen and PW3 Gian Chand. Both these witnesses have coaxed in the same voice that petitioner was engaged with respondent without deposing period when respondent had engaged petitioner. PW2 is a retired HPPWD official from Nurpur Division whereas PW3 is also an official of HPPWD Division Nurpur but he is also union leader. PW2 has revealed in cross-examination that he knew petitioner since childhood and was of the area of this witness which apparently shows motive of this witness to depose in favour of petitioner. Similarly, PW3 Gian Chand also appears to be interested witness as much as he happens to be union leader and petitioner was member of the union to which PW3 belongs. In cross-examination PW3 has admitted that petitioner had never worked with him and as such he had no occasion to know as to where petitioner worked. Thus, oral evidence led by petitioner is of no help to case of petitioner as there is overwhelming evidence on record led by respondent in particular mandays chart of petitioner which established that petitioner had not been engaged by respondent. Admittedly, it is not the case of petitioner that he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner from 1988 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove musterrolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent No.1 had not engaged petitioner as claimed by him from 1988 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as shown in para No.3 of claim petition and para No. 2 of affidavit Ex.PW1/A worked under HPPWD Division Nurpur but RW1 has shown his inability to tell if any notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29-11-2010, only those workers had been shown in seniority list aforesaid who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

12. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali and this fact has remained undisputed however Sub-Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex.RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub-Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he

failed to prove his engagement by respondents. Enough has been emphasized by ld. counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22-12-2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen to that of petitioner had been retained and service of petitioner was illegally terminated *moreso* when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub-Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub-Division Suliali thereafter under Nurpur Division. As such, Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No. 2 of affidavit in HPPWD Sub-Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of H.P. in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter re-employment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

13. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board vs. Anjali Bepari (MS)**, it has been contended that respondent had violated principle of 'Last come First go' envisaged under section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of notice under Section 25-F of Act or payment of retrenchment compensation did not arise which was *sine qua non* for valid order of termination. In view of judgment 1997 (*supra*) and aforesaid reason, respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues No. 2 & 3 are decided in negative against petitioner and in favour of respondent.

14. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1988 to 1990, and as such it cannot be held that there had been delay and laches on part of petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue No.4 has become redundant which is decided accordingly.

Issue No. 3:

15. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief:

16. As a sequel to my findings on foregoing issues No.1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of December, 2018.

Sd/-
(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No.	: 817/201
Date of Institution	: 24-11-2016
Date of Decision	: 15-12-2018

Shri Pritam Chand s/o Shri Chatro Ram, r/o V.P.O. Danni, Tehsil Nurpur, District Kangra, H.P. *..Petitioner.*

Versus

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.

2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. *..Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.
 For the Respondent(s) : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the alleged termination of services of Shri Pritam Chand s/o Shri Chatro Ram, r/o V.P.O. Danni, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (i) the Executive Engineer, H.P.P.W.D., Division Nurpur, District Kangra, H.P. (ii) the Executive Engineer, H.P.P.W.D., Division Jawali, District Kangra, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after more than 21 years *vide* demand notice dated nil received in the Labour Office Dharamshala on 29-11-2012, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view delay of more than 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1985 who continued to work under HPPWD Sub Division-II and Sub Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in lieu thereof and therefore violated Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called ‘Act’ for brevity). It is further alleged that co-workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon’ble High Court of H.P. and those juniors similarly situated had been engaged by respondent No.1 on 25-5-2010 during pendency of writ petition. It is alleged that Nurpur Sub Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that aforestated work was also of perennial nature. It is claimed that respondent No. 2 *i.e.* Executive Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent No.1 that record *i.e.* retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No. 2. Averment made in the claim petition further reveal that petitioner had worked in road construction along-with several juniors retained by respondent who had been re-engaged and names of 24 workmen *i.e.* Rai Singh and others had been reflected in para No. 3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with re-engagement of workmen mentioned in para No.3 of claim petition) and that petitioner had worked under several mates in construction of road leading to Defence road, Aund, Chakki, Nurpur Hospital road etc. besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation

of Section 25-G had reengaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent No.1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon'ble Apex Court *i.e.* AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25-G of Act was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of reinstatement with back wages, seniority and all other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was shifted/renamed as HPPWD Division Jawali *vide* Govt. Notification No. PBW-(A) A (1) 17/94 dated 21-7-1994. It has been emphatically denied that petitioner had worked with respondent from 1985 to 1990 rather petitioner had never been engaged by respondent and therefore question of petitioner having worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically stated that persons named at serial No.1 to 24 were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P. however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of Section 25-B of Act and for said reason, there was no need to serve notice under Section 25 -F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under Section 25-G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 21 years from alleged termination. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is reasserted that respondent had allowed 18 workers to join on 25-5-2010 in pursuance to various Awards of this court passed on 22-12-2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 153. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18, Rule 4 CPC Ex. PW1/A, copy of letter dated 19-8-1998 Ex. PW1/B, copy of letter dated 18-12-1999 Ex. PW1/C, copy of notice dated 4-5-2002 Ex. PW1/D, copy of resolution dated 18-7-2002 Ex. PW1/E, copy of UPC and registered postal receipts Ex. PW1/F & G, copy of letter dated 18-1-2000 Ex. PW1/H. The petitioner examined Shri Sukar Deen and Gian Chand as PW2 & PW3 respectively and closed evidence. On the other hand, repudiating the evidence led by the petitioner,

respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21-7-1994 Ex. RW1/B, copy of office order dated 23-7-1994 Ex. RW1/C, copy of office order dated 29-11-2010 Ex. RW1/D, copy of letter dated 19-8-1998 Ex. RW1/E, copy of application dated 18-12-1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18-1-2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H, copy of mandays chart of Kusum Lata Ex. RW1/I & Ex. RW1/J and closed evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 07-7-2018 for determination which are as under:—

- (1) Whether termination of the services of petitioner by the respondents during year, 1990 is was legal and justified as alleged?
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged? ..*OPR.*

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:

Issue No. 1	: Yes
Issue No. 2	: Discussed
Issue No. 3	: Yes
Issue No. 4	: Discussed
Relief	: Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1985 till 1990 and thus *prima facie* there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year in which petitioner was terminated as in his affidavit Ex. PW1/A has maintained to have

remained engaged for five years from 1985 to 1990 without any stipulation of specific months as stated above. The testimony of petitioner has been supported by PW2 Sukar Deen and PW3 Gian Chand. Both these witnesses have coaxed in the same voice that petitioner was engaged with respondent without deposing period when respondent had engaged petitioner. PW2 is a retired HPPWD official from Nurpur Division whereas PW3 is also an official of HPPWD Division Nurpur but he is also union leader. PW2 has revealed in cross-examination that he knew petitioner since childhood and was of the area of this witness which apparently shows motive of this witness to depose in favour of petitioner. Similarly, PW3 Gian Chand also appears to be interested witness as much as he happens to be union leader and petitioner was member of the union to which PW3 belongs. In cross-examination PW3 has admitted that petitioner had never worked with him and as such he had no occasion to know as to where petitioner worked. Thus, oral evidence led by petitioner is of no help to case of petitioner as there is overwhelming evidence on record led by respondent in particular mandays chart of petitioner which established that petitioner had not been engaged by respondent. Admittedly, it is not the case of petitioner that he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring on record any such attendance register by which he could establish engagement of petitioner from 1985 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove muster rolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent no.1 had not engaged petitioner as claimed by him from 1985 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as shown in para No. 3 of claim petition and para No. 2 of affidavit Ex.PW1/A worked under HPPWD Division Nurpur but RW1 has shown his inability to tell if any notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29-11-2010, only those workers had been shown in seniority list aforesaid who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

12. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali, and this fact has remained undisputed however Sub Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex.RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he failed to prove his engagement by respondents. Enough has been emphasized by ld. counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22-12-2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen to that of petitioner had been retained and service of petitioner was illegally terminated moreso when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been

transferred from Dalhousie Sub Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub Division Suliali thereafter under Nurpur Division. As such, Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No. 2 of affidavit in HPPWD Sub Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of HP in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter re-employment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

13. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board vs. Anjali Bepari (MS)**, it has been contended that respondent had violated principle of 'Last come First go' envisaged under Section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of notice under Section 25-F of Act or payment of retrenchment compensation did not arise which was sine qua non for valid order of termination. In view of judgment 1997 (supra) and aforesaid reason, respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues No. 2 & 3 are decided in negative against petitioner and in favour of respondent.

14. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1985 to 1990, and as such it cannot be held that there had been delay and laches on part of petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue No.4 has become redundant which is decided accordingly.

Issue No. 3:

15. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief:

16. As a sequel to my findings on foregoing issues No.1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of December, 2018.

Sd/-
(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 805/2016
Date of Institution : 24-11-2016
Date of Decision : 15-12-2018

Shri Manoj Kumar s/o Shri Karam Chand, r/o Village and P.O. Khanni, Tehsil Nurpur, District Kangra, H.P. *..Petitioner.*

Versus

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. *..Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.
For the Respondent(s) : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the alleged termination of services of Shri Manoj Kumar s/o Shri Karam Chand, r/o Village and P.O. Khanni, Tehsil Nurpur, District Kangra, H.P. during 1990 by (i) The Executive Engineer, Nurpur Division, HPPWD Nurpur, District Kangra, H.P. (ii) The Executive Engineer, Jawali Division, HPPWD Jawali, District Kangra, H.P., who had worked on daily wages basis as beldar and has raised his industrial dispute after about 22 years *vide* demand notice dated nil received in the office of Labour Officer Dharamshala 13-06-2012 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of delay of about 22 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent during the year 1986 who continued to work under HPPWD Sub Division-II and Sub Division-I, Nurpur till 1990 when service of petitioner was illegally terminated by respondent. It further transpires from claim petition that petitioner had completed 240 days in preceding 12 calendar months before date of termination. The grievance of petitioner remains that he had been illegally terminated by respondent without giving notice of one month or pay wages in lieu thereof and therefore violated Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called ‘Act’ for brevity). It is further alleged that co-workers similarly situated as that of applicant/petitioner had filed case before Labour Court and before Hon’ble High Court of H.P. and those juniors similarly situated had been engaged by respondent No. 1 on 25-5-2010 during pendency of writ petition. It is alleged that Nurpur Sub Division was involved in construction and maintenance of road, building, bridges, repair and maintenance of tools and plants and patch work of metalled road, new road to village levels, widening of road and landslides clearance besides maintained that aforesaid work was also of perennial nature. It is claimed that respondent No. 2 *i.e.* Executive Engineer HPPWD Jawali Division was impleaded as party before Labour Officer when statement was made by officials of the respondent No.1 that record *i.e.* retrenchment and mandays of persons mentioned in claim petition had been shifted to respondent No. 2. Averment made in the claim petition further reveal that petitioner had worked in road construction along-with several juniors retained by respondent who had been re-engaged and names of 24 workmen *i.e.* Rai Singh and others had been reflected in para No. 3 of claim petition. It is alleged that petitioner was disengaged in the year 1990 (with re-engagement of workmen mentioned in para No. 3 of claim petition) and that petitioner had worked under several mates in construction of road leading to Defence road, Aund, Chakki, Nurpur Hospital road etc. besides maintained that 24 workmen mentioned were junior to petitioner have since been regularized. Thus, the claim of petitioner also remains that respondent in violation of Section 25-G had re-engaged junior workmen on 25th May, 2010. It is also alleged that after his termination whenever petitioner approached respondent No.1 they kept assuring him to engage besides that petitioner had also made several written request and on realizing that he would not be engaged by respondent a demand notice was issued. Thus, delay had occurred on account of assurances given by respondents to petitioner due to which he could not approach the Court timely. Referring to various judgments of Hon’ble Apex Court *i.e.* AIR 1990 SC 115 and 1997 (1) LLJ 576, it has been contended that Section 25-G of Act was not complied with by respondents besides violation of Section 25-F of Act as petitioner had completed 240 days as stated above. Accordingly, petitioner seeks relief of reinstatement with back wages, seniority and all other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay of 21 years in raising industrial dispute by issuing demand notice without any explanation. On merits asserted that petitioner did not work with respondents department. Further contended that Jassur HPPWD Division was shifted/renamed as HPPWD Division Jawali *vide* Govt. Notification no.PBW-(A) A (1) 17/94 dated 21-7-1994. It has been emphatically denied that petitioner had worked with respondent from 1986 to 1990 rather petitioner had never been engaged by respondent and therefore question of petitioner having worked for 240 days with the respondent did not arise. Admitted that HPPWD Jawali Division was involved in construction and maintenance of roads, buildings, bridges, repairs, maintenance of tools and plants as stated by claimant. It is categorically stated that persons named at serial No.1 to 24 were engaged by HPPWD Nurpur in pursuance to direction passed by Hon'ble High Court of H.P. however reiterated that petitioner did not complete 240 days in any year and therefore did not fulfill requirement of Section 25-B of Act and for said reason, there was no need to serve notice under Section 25-F of Act. It is also maintained that respondent had neither retained nor engaged any junior besides did not violate the policy of 'Last come First go' envisaged under Section 25-G of Act. It is also contended that petitioner had failed to explain delay of 21 years in issuing demand notice which has been served in the year 2011 after about 21 years from alleged termination. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is reasserted that respondent had allowed 18 workers to join on 25-5-2010 in pursuance to various Awards of this court passed on 22-12-2007. With regard to Smt. Kusum Lata w/o Shri Roshan Lal r/o Village & Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P., it is contended that she was junior to petitioner who had been engaged in 2000. It is emphatically denied that petitioner had filed claim petition after 15 years of retrenchment and junior/similarly situated were allowed to work by this court in the year 2007 and that workmen/junior were allowed to perform their duties in the year 2010 as stated above. Accordingly, petitioner claims same/similar relief in view of judgments of Hon'ble Apex Court reported in 1997 (6) SCC 721 and 1984 (4) SCC 343 & 1975 (1) Service Law Reporter 153. Accordingly, reiterating his stand in claim petition prayer has been made to reinstate petitioner with full back wages and all consequential relief.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18, Rule 4 CPC Ex. PW1/A, copy of letter dated 19-8-1998 Ex. PW1/B, copy of letter dated 18-12-1999 Ex. PW1/C, copy of notice dated 4-5-2002 Ex. PW1/D, copy of resolution dated 18-7-2002 Ex. PW1/E, copy of UPC and registered postal receipts Ex. PW1/F & G, copy of letter dated 18-1-2000 Ex. PW1/H. The petitioner examined Shri Sukar Deen and Gian Chand as PW2 & PW3 respectively and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21-7-1994 Ex. RW1/B, copy of office order dated 23-7-1994 Ex. RW1/C, copy of office order dated 29-11-2010 Ex. RW1/D, copy of letter dated 19-8-1998 Ex. RW1/E, copy of application dated 18-12-1999 filed by Smt. Kusum Ex. RW1/F, copy of letter dated 18-1-2000 Ex. RW1/G, copy of mandays chart of petitioner Ex. RW1/H, copy of mandays chart of Kusum Lata Ex. RW1/I & Ex. RW1/J and closed evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 07-7-2018 for determination which are as under:—

- (1) Whether termination of the services of petitioner by the respondents during year, 1990 is was legal and justified as alleged?
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged? ..*OPR*.
Relief.
9. For the reasons detailed hereunder, my findings on the above issues are as follows:-

Issue No. 1	: Yes
Issue No. 2	: Discussed
Issue No. 3	: Yes
Issue No. 4	: Discussed
Relief	: Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to refer to mandays chart Ex. RW1/H showing petitioner above named to have not worked with respondents even for a single day from 1986 till 1990 and thus *prima facie* there existed no relationship of workman and employer between the parties. Significantly, claimant/petitioner in his claim petition as well as evidence has not stipulated any specific month in which he had joined service with respondent or any specific month when his service had been terminated as only year in which petitioner joined and year in which petitioner was terminated as in his affidavit Ex. PW1/A has maintained to have remained engaged for five years from 1986 to 1990 without any stipulation of specific months as stated above. The testimony of petitioner has been supported by PW2 Sukar Deen and PW3 Gian Chand. Both these witnesses have coaxed in the same voice that petitioner was engaged with respondent without deposing period when respondent had engaged petitioner. PW2 is a retired HPPWD official from Nurpur Division whereas PW3 is also an official of HPPWD Division Nurpur but he is also union leader. PW2 has revealed in cross-examination that he knew petitioner since childhood and was of the area of this witness which apparently shows motive of this witness to depose in favour of petitioner. Similarly, PW3 Gian Chand also appears to be interested witness as much as he happens to be union leader and petitioner was member of the union to which PW3 belongs. In cross-examination PW3 has admitted that petitioner had never worked with him and as such he had no occasion to know as to where petitioner worked. Thus, oral evidence led by petitioner is of no help to case of petitioner as there is overwhelming evidence on record led by respondent in particular mandays chart of petitioner which established that petitioner had not been engaged by respondent. Admittedly, it is not the case of petitioner that he had ever marked his attendance in all those five years the period for which petitioner claims to have worked. If any attendance register of respondent was in existence on which signature of petitioner existed, the same was required to be produced in evidence but petitioner has failed to bring

on record any such attendance register by which he could establish engagement of petitioner from 1986 to 1990 and thus failed to adduce best evidence available rather the same has been withheld for which an adverse inference deserves to be drawn against petitioner's case as petitioner had not prayed for production of such record during pendency of this case. Even petitioner could prove muster rolls for the period which he had worked or any appointment letter showing him to have been engaged by respondents. Repudiating the evidence adduced by petitioner, RW1 Shri Dinesh Kumar Dhiman, Executive Engineer HPPWD Nurpur has deposed on oath that respondent no. 1 had not engaged petitioner as claimed by him from 1986 to 1990 besides asserted that since petitioner had not worked with respondent, there existed no relationship of employer and employee between the two and therefore the question of completing 240 days did not arise. Although RW1 has admitted that workers as shown in para No.3 of claim petition and para No.2 of affidavit Ex.PW1/A worked under HPPWD Division Nurpur but RW1 has shown his inability to tell if any notice had been given to all these 24 co-workmen when their services were terminated. Clarifying of his own that no seniority list was prepared by respondent/department. He has further stated in cross-examination that as per Ex. RW1/D dated 29-11-2010, only those workers had been shown in seniority list aforesaid who had been engaged in 2010 and that none was engaged thereafter. As such, facts revealed in cross-examination of RW1 are not of any help to the petitioner's claim.

12. In so far as bifurcation of Jassur HPPWD Division is concerned, it has been renamed as HPPWD Division Jawali, and this fact has remained undisputed however Sub Division Nurpur got merged with HPPWD Division Jawali as is evident from Ex.RW1/B and Ex. RW1/C. The petitioner claimed to have been engaged under Sub Division Nurpur but had not produced any such record. Further if bifurcation of Division or change of name of Division is accepted as correct yet it is also not of any help to the claim of petitioner as he failed to prove his engagement by respondents. Enough has been emphasized by ld. counsel for petitioner that Smt. Kusum Lata was engaged by Engineer-in-Chief in 2000 and that 24 other workmen joined in pursuance to direction of the Hon'ble High Court of H.P. *vide* which the Award dated 22-12-2007 passed by this court was upheld but on both these counts, it cannot be stated that juniors workmen to that of petitioner had been retained and service of petitioner was illegally terminated moreso when petitioner has failed to prove his engagement by respondents. Suffice would be to state here that Kusum Lata had been transferred from Dalhousie Sub Division HPPWD on request who was initially appointed in 1983 and was posted at HPPWD Sub Division Suliali thereafter under Nurpur Division. As such, Smt. Kusum Lata had at no point of time worked under Jassur Division or thereafter under Jawali Division created in the year 1994 as has come in evidence. Similarly, 24 workers had joined as mentioned in para No. 2 of affidavit in HPPWD Sub Division Nurpur who had neither been engaged either under Jawali Division or under Division Jassur which has since been renamed at Jawali HPPWD Division. Even otherwise also these 24 workers had been engaged on the basis of Award passed by this court which had consequently upheld by Hon'ble High Court of HP in favour of all these workmen. That being so, it cannot be stated that juniors to petitioner had been retained and petitioner had been terminated from service arbitrarily in violation of provisions of Section 25-G of the Act. It has rightly been contended by respondent that petitioner has failed to establish retention of any junior or engagement of junior, the respondent was not under obligation to issue notice under the Act to the petitioner for termination and thereafter re-employment as stated above and as such plea with regard to engagement of Smt. Kusum Lata in the year 2000 is of no help to the petitioner as she had been engaged in 1983 as has come in evidence who was certainly senior to petitioner.

13. Referring to judgments of Hon'ble Apex Court reported in **AIR 1908 SC 115 para 40** and another judgment reported in **1997 (1) LLJ 576** titled as **Central Board vs. Anjali Bepari (MS)**, it has been contended that respondent had violated principle of 'Last come First go' envisaged under Section 25-G of Act while terminating service of petitioner. As stated above, case of the petitioner also remains that Smt. Kusum Lata had been engaged in 2000 and 24 workmen had been engaged who had joined in 2007 merits rejection in view of the fact that neither Smt. Kusum Lata was junior to petitioner nor these several workers referred above were junior to petitioner as the same has not been proved by petitioner by reliable evidence who have been appointed on the basis of order of court and can be stated to be junior to the petitioner who had been engaged by respondent of his own in arbitrary manner. Since there is no reliable evidence on record establishing relationship of petitioner and respondent as workman and employer question of notice under Section 25-F of Act or payment of retrenchment compensation did not arise which was sine qua non for valid order of termination. In view of judgment 1997 (supra) and aforesaid reason, respondent is held to have not violated either Section 25-G or 25-H of the Act. Issues No. 2 & 3 are decided in negative against petitioner and in favour of respondent.

14. In so far as plea of delay and laches is concerned, the same could have relevance if petitioner had proved demand notice as well as being workman under respondent from 1986 to 1990, and as such it cannot be held that there had been delay and laches on part of petitioner rather on the ground of delay and laches relief could not be declined. In the facts and circumstances of case as stated above, issue No. 4 has become redundant which is decided accordingly.

Issue No. 3:

15. Ld. D. A. for respondents has contended that claim petition is not maintainable as petitioner has failed to prove that he had never been engaged by respondents. Be it stated that petitioner has not produced on record any attendance register himself or any records showing his representation made to respondent in writing by which inference of petitioner to have been engaged at any point of time could be drawn. Even otherwise as discussed in foregoing paras also evidence with regard to petitioner's termination is not established. That being so, petitioner having not established relationship of workman with the respondents, claim petition is held to be not maintainable against respondent. Issue in hand is decided in affirmative against the petitioner and in favour of respondent.

Relief:

16. As a sequel to my findings on foregoing issues No.1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs in peculiar circumstances of case.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of December, 2018.

Sd/-
(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 183/2013
Date of Institution : 15-11-2013
Date of Decision : 15-12-2018

Shri Sandeep s/o Shri Balraj, r/o Village Chhatra, P.O. Bedarwal, Tehsil Haroli, District Una, H.P. ..Petitioner.

Versus

The Managing Director, M/s Cozy Touch Polyfoams (P) Ltd. Village and P.O. Hir Thada (Laluwal), Tehsil Haroli, District Una, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajinder Thakur, Adv.
: Sh. Sushil Jamwal, Adv.
For the Respondent : Sh. Manish Kumar, AR

AWARD

The following reference has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Shri Sandeep s/o Shri Balraj, r/o Village Chhatra, P.O. Bedarwal, Tehsil Haroli, District Una, H.P. *vide* order dated 08-9-2012 by the employer/The Managing Director, M/s Cozy Touch Polyfoams (P) Limited, Village and P.O. Hir Thada (Laluwal), Tehsil Haroli, District Una, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged by respondent as Helper on 1-1-2011 who continuously worked with respondent till he had met with an accident while being on duty and sustained injuries in his right hand. It transpires from claim petition that petitioner had remained under treatment for about three months who thereafter reported for duty but was not allowed to join. It is alleged that petitioner had continuously made attempt to join duty to work with respondent but could not succeed however after about 5 days he was refused by respondent to join duty on the ground that petitioner has become unfit to work consequent upon which petitioner raised industrial dispute claiming therein that petitioner had worked for more than 240 days continuously in service preceded by his termination on 8-9-2012 and therefore petitioner alleges that respondent had violated provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called ‘the Act’ for brevity). It further transpires from claim petition that work of petitioner as Helper was good and there was no complaint against him besides no charge-sheet has ever been raised, no show cause notice was issued by respondent and as such termination of petitioner was unfair labour practice besides claimed

that respondent had not maintained any seniority list and that junior co-workmen to him had been retained and service of petitioner had been illegally terminated. It is claimed that ever since in violation of provisions of Act as stated above termination of petitioner from service by respondent, he has remained unemployed. Accordingly, petitioner seeks reinstatement with full back wages and other attendant benefits to which petitioner is entitled could be awarded to petitioner in the interest of justice.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, suppression of material facts, petitioner being barred by his act and conduct, petitioner having been not come to the court with clean hands. On merits admitted that petitioner had joined on 14-7-2011 as Helper and in accident which took place on 25-9-2011 petitioner sustained injuries in his right hand while performing duty however in reply, respondent has stated that petitioner got accidentally injured on 25-9-2011 who rejoined duty thereafter but was not assigned any hard work besides maintained that doctor had given him fitness certificate on 14-1-2012 when he was found fit for duty and worked till 8-9-2012 and thereafter did not join duty. It is claimed that entire expenditure of treatment of petitioner was borne by respondent who had been given full salary/wages from 25-9-2011 to 21-12-2012. It is alleged that petitioner rejoined duty on 21-12-2012 and thereafter continuously worked till 18-8-2012 with the respondent. It is asserted that on 19-8-2012 petitioner without any intimation started remaining absent from duty due to which respondent had suffered loss. It is alleged that on 23-8-2012 *vide* letter No. CTPL/HRD/2012/192 dated 23-8-2012 petitioner was called upon to resume his duty but he did not file reply. It is further alleged that on 31-8-2012 another registered letter No. CTPL/HRD/2012/193 was sent to him but the said letter was received back with report that petitioner had refused to receive the letter. It is alleged that on 8-9-2012 service of petitioner was finished in view of his continued absence from service with respondent however petitioner could take balance on any working days of the factory. It is asserted that since petitioner had joined on 28-8-2012 after his treatment after obtaining medical fitness from doctor and he continued worked till 8-9-2012 so question of refusal of rejoin duty did not arise. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18, Rule 4 CPC, the petitioner has also examined Shri Amrit Lal s/o Sh. Hukkam Chand as PW2, tendered/proved his affidavit Ex. PW2/A, copy of salary slip Ex. P2, copy of medical fitness certificate Ex. P3, copy of bank voucher Ex. P4, copy of letter dated 23-8-2012 Ex. P5, copy of letter dated 31-8-2012 Ex. P6, copy of letter dated 8-9-2012 Ex. P7, copy of letter dated 10-4-2012 Ex. P8, copy of letter dated 13-5-2012 Ex. P8 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Gurmeet Singh s/o Shri Ram Dass, tendered/proved affidavit Ex. RW1/A, the respondent examined Shri Balbir Singh s/o Sh. Om Prakash as RW2, tendered/proved his affidavit Ex. RW2/A, copy of registered letter with AD Ex. RW2/A, copy of signature Ex. RW2/B, copy of registered letter Ex. RW2/C, copy of signature Ex. RW2/D. PW3 Shri Manish Kumar, Assistant Manager, HR, c/o M/s Cozy Touch Polyfoams India Pvt. Ltd., tendered/proved his affidavit Ex. RW3/A, copy of medical fitness certificate Ex. RW3/A of respondent and closed the evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. A.R. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 29-4-2014 for determination which are as under:—

- (1) Whether the termination of the services of the petitioner by the respondent *vide* order dated 08-09-2012 is was illegal and unjustified as alleged? ..*OPP*.
- (2) Whether the claim petition is not maintainable in the present form? ..*OPR*.
- (3) Whether the petitioner has concealed the true and material facts from the Court as alleged. If so, its effect? ..*OPR*.
- (4) Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? ..*OPR*.
- (5) Whether petitioner has not come to the Court with clean hands as alleged. If so, its effect? ..*OPR*.

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	: Yes
Issue No. 2	: No
Issue No. 3	: No
Issue No. 4	: No
Issue No. 5	: No
Relief.	: Petition is partly allowed per operative part of award.

REASONS FOR FINDINGS

Issue No. 1:

10. Relationship of petitioner being worker of respondent is not in dispute. It is also not in dispute that petitioner had sustained injuries on his right hand while performing duty due to which he remained hospitalized undergone medical treatment from 25-9-2011 to 21-12-2011 and that expenditure of medical treatment of petitioner was completely borne by the respondent. Ex. RW3/B is the medical fitness certificate issued by Shergill Health Care Centre, Una showing fitness of petitioner on 14-1-2012. In his affidavit, petitioner as PW1 has admitted that he had joined duty without stipulating therein as to when he first approached the respondent to join duty after sustaining injury in right hand but in cross-examination he has admitted that he had joined on 21-12-2011 who was assigned light work. Be it stated that petitioner has specifically admitted that from 14-1-2012 to 18-8-2012 he had continuously remained engaged and worked with respondent. As such, plea of the petitioner that he was not allowed to join duty by respondent manifestly appears to be not true which cannot be accepted per se. PW2 Shri Amrit Lal is retired worker having worked with the

respondent company has supported version of petitioner but in cross-examination, he revealed that he had been knowing petitioner for last four to five years rather when he was working with respondent, petitioner had joined duty with respondent. Significantly, in cross-examination PW2 has admitted that petitioner had been working from 21-12-2011 to 18-8-2012 but was not paid wages. Be it stated that PW1 himself has not stated so as in examination-in-chief that he has not stated that he was not paid wages from 21-12-2011 to 8-9-2012. As such, PW2 manifestly appears to be tutored witness, not conversant with facts of case and cannot be believed particularly claim of back wages pertains to after 8-9-2012 whereas PW2 has deposed about salary in year 2011 was not paid. This witness has failed to tell as to why respondent through Shri Manish Kumar, Assistant Manager, HR had refused petitioner to enter into factory premises for work. Contrary to version of PW1 and PW2 on the point of on not joining of the petitioner, RW3 Shri Manish Kumar has negated claim of petitioner while filing affidavit in support of reply. Cross-examination of RW3 revealed that petitioner had sustained injury while working in factory besides admitted that petitioner had joined on 21-12-2011 when he was given light work keeping in all circumstances but he has denied that petitioner was not allowed to join duty by him rather there was apparently no ground for not allowing petitioner when he was continuously rendering service before 8 months from 8-9-2012.

11. In his affidavit Ex. RW3/A has maintained that petitioner had left the job without informing who and did not resume duty and for said reason, respondent had issued several registered letters calling upon petitioner to join duty. To prove sending of registered letter and denial of petitioner to repeatedly not receive such communication/correspondence, respondent had relied upon testimony of RW2 Shri Balbir Singh working as BPM Bhedawal, Haroli. This witness has fully supported the plea of respondent that petitioner had been sent registered letter Ex. RW2/A who identified his signature in red circle Ex. RW2/B and further proved another registered letter Ex. RW2/C sent to petitioner by respondent and this letter also existed endorsement and signature of this witness in red circle Ex. RW2/D. He has clarified on oath that petitioner had refused to receive the letter when it was handed over to him and thereafter registered letters aforesaid was returned to respondent unsigned. With the aid of these registered letters which contained letters Ex. P5 dated 23-8-2012, Ex. P6 letter dated 31-8-2012 which were not received by the petitioner deliberately. Ex. P7 is letter dated 8-9-2012 intimating petitioner that since he had not received registered letters aforesaid it seemed that petitioner was not interested to work with respondent and for said reason his service was terminated and petitioner was at liberty to take his balance dues from respondent company. Be it stated that endorsement of letter Ex. P7 was forwarded to Labour Office and Labour Inspector Una. In the witness box Shri Gurmeet Singh who was earlier working as Manager (HR) has fully supported the plea of respondent who sworn in affidavit Ex. RW1/A in which he has given details of letters signed by him while working as Manager (HR) which were issued to petitioner but not received by petitioner. In cross-examination, no question has been asked *qua* non issuance of registered letters by respondent. Similarly, RW3 has also maintained that petitioner did not receive letter and for said reason his service had been terminated as it seems that petitioner was not interested to work and his service was finished as has come in evidence which was not the correct procedure.

12. Ld. Counsel for the petitioner had contended with vehemence that there was no reliable evidence *qua* abandonment of job by petitioner as registered letters were not duly served rather respondent after realizing that petitioner had sustained injuries in right hand was not capable of doing hard work opted that he be not allowed to join service with respondent and for reason illegal means had been adopted. Suffice would be to state here that there is sufficient reliable evidence on record establishing that respondent made to

best endeavour to notify petitioner to resume duty ever since he did not return back *i.e.* 8-9-2012 and thereafter as stated above. Evidently, evidence on record establishes that petitioner had not sought any approval of respondent while proceeding on leave and not coming to the factory premises after 8-9-2012. It has rightly been contended by Ld. Counsel for the respondent, as has also been incorporated in written arguments submitted through counsel that even if the petitioner was absenting from duty petitioner could not be dismissed or terminate from service by respondent without raising charge-sheet or holding domestic inquiry/departmental inquiry particularly when petitioner had completed more than 240 days having continuously worked from 14-1-2012 to 8-9-2012. There is no *iota* of evidence on record remotely suggesting that petitioner had given notice under Section 25-F of the Act while terminating service or paying wages in lieu thereof. Similarly, there is no authenticated evidence on records establishing after issuance of registered letters Ex. P5, Ex. P6 and terminating service *vide* letter Ex. P7 was rightful procedure resorted to by respondent as no charge-sheet or departmental inquiry had been initiated. Even Ex. P7 was not proved to have been sent through registered post. As such, termination of petitioner is held to be illegal in violation of provisions of Section 25-F of the Act. It is asserted that if termination of workman is illegal he would be entitled to relief of reinstatement with full back wages.

13. To claim back wages, it was necessary for petitioner to have alleged specifically that he had **not remained gainfully employed ever since his termination on 8-9-2012**. There is no plea in the claim petition to this effect. Even while swearing affidavit Ex. PW1/A petitioner has not at all whispered **even a single word qua his entitlement for back wages as he had not remained gainfully employed**. At the most in the affidavit petitioner asserted that he should be given all benefits. It has rightly been contended by Ld. Counsel for the respondent that to get back wages petitioner was required specifically plead as well as prove that he was not gainfully employed ever since his termination. Evidently when petitioner has neither pleaded nor proved that he was not gainfully employed after 8-9-2012 from date of termination, certainly he could not be awarded back wages. As such, for want of specific pleadings as stated above and available evidence on record to that effect, it is held that petitioner is not entitled for back wages although would be entitled for seniority and continuity of service from date of illegal termination as stated above. Accordingly, issue No.1 is answered in affirmative against respondent and in favour of petitioner.

Issue No. 2:

14. It has been contended by representative of management that claim petition is not maintainable. Since petitioner has been held to be workman of the respondent company who was illegally terminated, it could not be stated that claim petition for reinstatement, back wages and other consequential benefits was not maintainable against respondent. Accordingly, issue No. 2 is answered in negative in favour of petitioner and against the respondent.

Issue No. 4:

15. There is nothing in evidence suggesting in what manner petitioner is estopped from filing claim petition *qua* his act and conduct. Merely because after sustaining injury while working in the factory premises respondent had rendered medical treatment to petitioner at his own would not disentitle seeking re-engagement in service after fitness certificate issued by doctor and for said reason petitioner could not be estopped to file claim petition as medical aid by RW3 Shri Manish Kumar to represent and thereafter expenditure of entire treatment was borne by respondent as has also been admitted by petitioner on oath

but for his illegal termination petitioner had to seek legal remedy for redressal of his grievance. Issue No. 4 is decided in favour of petitioner and against the respondent.

Issues No. 3 & 5:

16. These issues were not pressed which are decided unpressed in favour of petitioner and against respondent.

Relief:

17. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly in favour of petitioner and against respondent. Accordingly, the respondent is hereby directed to re-engage the petitioner forthwith who shall be entitled to seniority and continuity in service **except back wages**, leaving the parties to bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of December, 2018.

Sd/-
(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 303/2015
Date of Institution : 16-07-2015
Date of Decision : 17-12-2018

Shri Man Singh s/o Shri Prakash Chand, r/o Village Kuffa, P.O. Killar, Tehsil Pangi,
District Chamba, H.P. *..Petitioner.*

Versus

The Block Development Officer, Pangi, Tehsil Pangi, District Chamba, H.P.
..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. O.P. Bhardwaj, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the industrial dispute raised by the worker Shri Man Singh s/o Shri Prakash Chand, r/o Village Kuffa, P.O. Killar, Tehsil Pangi, District Chamba, H.P. before the Block Development Officer, Pangi, District Chamba, H.P. *vide* demand notice 05-05-2012 regarding his alleged termination of service *w.e.f.* 01-12-2005 suffers from delay and laches? If not, whether termination of the services of Shri Man Singh s/o Shri Prakash Chand, r/o Village Kuffa, P.O. Killar, Tehsil Pangi, District Chamba, H.P. the Block Development Officer, Pangi, District Chamba, H.P. *w.e.f.* 01-12-2005 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been initially engaged as daily wage beldar on muster roll basis in the year 2002 who continuously worked till October, 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as ‘continuous services’ for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month’s notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is contended that respondent had not followed the provisions of Section 25-F of the Act while dis-engaging the services of petitioner. It is stated that petitioner is very poor and had no source of income besides after termination of the services of petitioner, he had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had re-engaged number of new workman from time to time and respondent had not followed the principle of ‘Last come, First go’ envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of December, 2005. He further prayed for reinstatement in service *w.e.f.* month of December, 2005 along-with back wages, seniority including continuity in service as petitioner has remained unemployed

since the date of his illegal termination. The petitioner has also prayed that period of intermittent fictional breaks given time and again during entire service of petitioner between 2002 to December, 2005 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2010 having completed 8 years of service and per the policy of HP Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged muster roll in 2002 who worked upto November, 2005 intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. It is denied that junior to the petitioner had been retained by the respondent whereas service of petitioner had been terminated. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will. It is stated that respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2005 he would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18, Rule 4 CPC, copy of office order Ex. PW1/B, copy of letter dated 17-1-2012 Ex. PW1/C, copy of letter dated 25-5-2011 Ex. PW1/D, copy of letter dated 4-5-2010 Ex. PW1/E and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Surender Kumar Thakur, Block Development Officer, Pangi as RW1 tendered/proved his affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B, copy of order dated 1-12-2014, copy of notification Ex. RW1/C and closed the evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 5-12-2016 for determination:—

- (1) Whether the industrial raised by petitioner *vide* demand notice dated 5-5-2012 *qua* his termination of service *w.e.f.* 01-12-2005 by respondent suffers from vice of delay and laches as alleged? ..*OPP.*

- (2) Whether termination of services of the petitioner by the respondent *w.e.f.* 01-12-2005 is/was improper and unjustified as alleged? ..*OPP.*
- (3) If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (4) Whether the claim petition is not maintainable in the present form? .. *OPR.*

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:

Issue No. 1	: Discussed
Issue No. 2	: Yes
Issue No. 3	: Discussed
Issue No. 4	: No
Relief.	: Petition is partly allowed awarding per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship between petitioner and respondent being workman and employer is not in dispute. It is not in dispute that petitioner had been engaged as daily waged beldar on muster roll basis by respondent. Mandays chart Ex. RW1/B on records establishes that petitioner had been engaged in June, 2002 who worked for 19 days in whole year and in all 584 days till November, 2005 but in November, 2005 petitioner had worked for 161 days. A bare glance at the mandays chart would show that petitioner had rendered more than 160 days service in preceding 12 months from his termination for applicability of Section 25-B of Act *qua* claim of petitioner who worked in tribal area of Pangi Sub Division, it was to be established that petitioner worked for more than 160 days. In the case in hand, mandays chart relied by respondent established that petitioner had worked for 161 days *i.e.* more than 160 days and thus Section 25-B of Act was established and consequently compliance of Section 25-F of Act was required. The petitioner in the witness box has reiterated his stand *qua* having been illegally terminated in violation of Section 25-F of the Act but certainly the respondent had not complied the mandatory requirement issuance of one months notice or wages in lieu thereof under Section 25-F of Act as stated above.

12. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued calling upon him to join duty failing which charge sheet could be raised by respondent. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after December, 2005. No reason whatsoever has been assigned for such inaction or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service when petitioner had

absented as stated above. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangti Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent and also law laid down by Hon'ble Supreme Court reported in **AIR 1979 SC 582** titled as **G.T. Lad & Ors. vs. Chemicals and Fibres India Ltd.**, it would be unsafe to hold that petitioner had abandoned the job and thus plea of abandonment merits rejection. In view of foregoing, respondent is held to have violated Section 25-F of Act while retrenching petitioner from service.

13. In so far as violation of provisions of Section 25-G is concerned, suffice would to state here that RW1 Shri Surender Kumar Thakur, Block Development Officer, Pangti has specifically admitted in cross-examination that petitioner had worked on muster roll basis and workman namely Jan Devi who had been terminated from service in the year 2005 had remained re-engaged. He has also admitted that said Jan Dei now had been regularized by the respondent who was junior to petitioner besides maintained that petitioner had left the job of his own accord. He has further stated that the case of the petitioner remains that while retrenching, respondent had ignored procedure for retrenchment required to be followed by employer which primarily based on doctrine of '**Last come First go**' envisaged under Section 25-G of Act as in the similarly situated workman in which junior who has come last is to be disengaged first. Certainly, junior to petitioner has been continuing in service whereas petitioner had been retrenched in violation of Section 25-G of Act by retaining junior as stated above and service of petitioner was terminated. For the applicability of Section 25-G, it is not required to be established that petitioner should have factually worked for more than 240 days under Section 25-F of Act in view of judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which it has been held that claimant/petitioner need not establish having worked for 240 days in a year preceding termination. Certainly in this case, petitioner has worked for large number of days as reflected in mandays chart and had been illegally retrenched in violation of Section 25-G of Act.

14. Ld. counsel for petitioner has emphasized that consequent upon his illegal termination, petitioner has remained unemployed and was entitled for full back wages from the date of illegal termination. In support of his plea Ld. Counsel for petitioner has taken me through contents of claim petition as well as affidavit sworn by the petitioner. Ld. D.A. representing respondent/State on the other hand has taken me through cross-examination of petitioner in which petitioner has in unambiguous terms had admitted that he had cultivable land from which he had earnings besides he also worked as labourer to earn his livelihood. That being so, it cannot be stated that petitioner was not gainfully employed ever since his illegal termination which was required for entitlement of petitioner *qua* back wages.

15. Ld. Counsel for the petitioner vehemently argued that petitioner was illegally terminated in December, 2005 who thereafter had approached the respondent *vide* representations dated 4-5-2010 and 17th January, 2012 respectively Ex. PW1/D and Ex. PW1/C and thereafter petitioner had approached Labour-cum-Conciliation Officer, Chamba where sufficient time took place and the Labour Officer, Chamba had submitted failure report in the year 2014 in pursuance to which Labour Commissioner Shimla had referred petitioner's reference to Labour Court-cum-Industrial Tribunal for adjudication. On 9th July, 2015 and thereafter claim under Section 10 of Industrial Disputes Act was filed thus

sufficient explanation has been given for the delay besides petitioner was unskilled labourer, fell in the category of beldar and had brought before Labour Officer, Chamba by issuing demand notice dated 5-5-2012. From December, 2005 to 2010, the petitioner claims to have approached various authorities who did not pay any heed to his request and from evidence on record delay is satisfactorily explained.

16. Ld. D.A. representing respondent/department has pointed out that retrenchment of petitioner in this case took place on December, 2005 and that industrial dispute was raised about 4½ years from date of retrenchment. Repudiating the argument advanced by Ld. D.A., Ld. Counsel for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when despite repeated assurances to absorb the petitioner in govt. department, he was not offered any appointment or absorbed by the government or the respondent. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches.

17. Ld. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar Vs. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is exists an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Ld. counsel for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue of the respondent moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Ld. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination in this case is whether reference made at such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have been taken into

consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court.

18. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. v. State of Rajasthan** in judgment of **2016 (supra)**. In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions qua consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manually work for respondent. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016) supra**. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law. Ld. Counsel for the petitioner has contended that termination of petitioner has been made in violation of provisions of Industrial Disputes Act, 1947. The petitioner is liable to reinstated in service with full back wages. On the other hand Ld. D.A. has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which criteria to be taken into consideration by Labour Court in awarding compensation has been laid down. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute.

19. I have gone through the judgment relied upon by Ld. D.A. for respondent and of the view that judgment in Geetam Singh's case of (2013) does not apply to the case in hand in which Hon'ble Apex Court has laid down guidelines and factors to be considered by the Labour Court in cases involving violation of Industrial Disputes Act. In the case in hand before this Court, petitioner had promptly approached unlike in **Geetam Singh's** case when dispute was raised after six years and Hon'ble Apex Court instead of reinstatement of claimant/petitioner had awarded compensation but in the case in hand, demand notice was given to respondent after about 4½ years besides delay was satisfactorily explained by petitioner as PW1. Since the judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)** had

different facts particularly on delay in giving demand notice by petitioner before Hon'ble Apex Court after six years the same does not apply in the case in hand. Keeping in view facts and circumstances of case as has come in the evidence, petitioner is held entitled for relief of reinstatement with other consequential benefits such as seniority and continuity in service instead of lump sum compensation. Issues no. 1 is decided in negative whereas issue no. 2 is decided in affirmative and issue No. 3 is decided as discussed and are answered accordingly.

Issue No. 4:

20. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised. Issue is thus answered in negative in favour of petitioner and against the respondent.

Relief:

21. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. Accordingly, the respondent is hereby directed to re-engage the petitioner forthwith who shall be entitled to seniority and continuity in service **except back wages** from date of demand notice 26-9-2009, leaving the parties to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of December, 2018.

Sd/-
(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No.	: 222/2016
Date of Institution	: 11-04-2016
Date of Decision	: 17-12-2018

Shri Bhagwan Chand s/o Shri Gian Chand, r/o Village Kuffa, P.O. Killar, Tehsil Pangi, District Chamba, H.P. *..Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. O.P. Bhardwaj, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Bhagwan Chand s/o Shri Gian Chand, r/o Village Kuffa, P.O. Killar, Tehsil Pangi, District Chamba, H.P. during September, 2004 by the Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P., who had worked as beldar on daily wages and has raised his industrial dispute after more than 7 years *vide* demand notice dated 09-05-2012, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of delay of more than 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been initially engaged as daily wage beldar on muster roll basis in the year 1997 who continuously worked till October, 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as ‘continuous services’ for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month’s notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is contended that respondent had not followed the provisions of Section 25 -F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, he had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had re-engaged number of new workman from time to time and respondent had not followed the principle of ‘Last come, First go’ envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Sher Singh in 1996, Gurdev in 1994, Man Dei in 1994, Balwant in 1996, Dila Ram in 1996, Ram Dei in 2003, Dev Raj in 2007, Bameshwar Dutt in 2011 and Raj Kumar in 2011. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had

been served upon him and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of October, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retranchment by the respondent in the month of October, 2004. He further prayed for reinstatement in service *w.e.f.* month of October, 2004 alongwith back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1997 to October, 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2005 having completed 8 years of service and per the policy of HP Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1997 who worked upto 2004 intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2004 he would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18, Rule 4 CPC, copy of seniority list Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer,

HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays of workers Ex. RW1/C and closed the evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 5-10-2018 for determination:

- (1) Whether termination of service of petitioner by the respondent during September, 2004 is/was illegal and unjustified as alleged? ..*OPP*.
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (3) Whether the claim petition is not maintainable in the present form? .. *OPR*.
- (4) Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? ..*OPR*.

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:

Issue No. 1	: Yes
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: Discussed
Relief.	: Petition is partly allowed awarding lump sum compensation of Rs.1,25,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1997 till September, 2004 whereas the claimant/petitioner alleges that he had worked from 1997 to October, 2004. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged till September, 2004 and not upto October, 2004. Admittedly, the reference of appropriate govt. does not

relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangti Sub Division, Chamba District and remained engaged from 1997 to September, 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in September, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangti Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangti Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that petitioner had abandoned the job and thus plea of abandonment merits rejection.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 158 days in the year 1997, 97 days in 1998, 119 days in 1999, 126 days in 2000, 111 days in 2001, 139 days in 2002, 137 days in 2003 and 94½ days in 2004 and thus in his

total service from 1997 to September, 2004 in 08 years as he had worked for 720.5 days. Be it noticed that petitioner had not worked for more than 160 days in preceding 12 calendar months prior to termination and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to illegal termination. It is also evident from mandays chart Ex. RW1/B that in the year 2004, the petitioner had merely worked for 94½ days and thus immediately in preceding 12 calendar months from the month of termination petitioner had factually not rendered service of 160 days continuous service of one year envisaged under Section 25-B of Act and thus it was not at all required for respondent to have issued a notice under Section 25-F of Act. Accordingly, respondent is held to have not violated provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004 even at the time when junior persons were re-engaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the junior workers mentioned in para No.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1997 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as reflected in Ex. PW1/B. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. PW1/B were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in September, 2004, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Counsel of petitioner,

Id. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied from admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same**'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *Supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

"12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in

accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. Vs. Telecom District Manager, Karnataka[4] it was held by this Court as follows-

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. Vs. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh Vs. The Sirhind Co-operative Marketing- Cum- Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:-

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case,

the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. Counsel for petitioner, Ld. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub- Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service- Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act-Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the

appellant-employer within six weeks failing which interest @ 9% p.a. will be payable.
[Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947 Section-25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstance which the Labour Court must keep in view before granting relief**".

21. Repudiating the arguments by Ld. D.A. for the State, ld. counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to his credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation**. Ld. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No.5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. Counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652**. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh Vs. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In **2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified

by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25 -G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 08 years and actually worked for 720.5 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **seven years i.e.** demand notice was given on 9-5-2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Ld. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013**. Ld. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar Vs. Joint Director Sericulture Department and another**. I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of

inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment (2016) *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs.1,25,000/- (Rupees one lakh twenty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3:

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief:

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,25,000/- (Rupees one lakh twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of December, 2018.

Sd/-
(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref. No. : 443/201
Date of Institution : 19-08-2016
Date of Decision : 17-12-2018

Shri Roshan Lal s/o Shri Panchi Lal, r/o Village Mahaliyat, P.O. Killar, Tehsil Pangi,
District Chamba, H.P. ..Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba,
H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. O.P. Bhardwaj, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Roshan Lal s/o Shri Panchi Lal, r/o Village Mahaliyat P.O. Killar, Tehsil Pangi, District Chamba, H.P. during 09/2004 by the Executive Engineer, H.P.P.W.D. Division Killar, (Pangi) District Chamba, H.P., who has worked as beldar on daily wages basis and has raised his industrial dispute after more than 7 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 79, 125.5, 100, 108, 126, 57, 85, 130 and 118 days during the years 1994, 1995, 1996, 1999, 2000, 2001, 2002, 2003 and 2004 respectively and delay of more than 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been initially engaged as daily wage beldar on muster roll basis in the year 1994 who continuously worked till 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as ‘continuous services’ for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage

service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, he had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had re-engaged number of new workman from time to time and respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Suraj Ram in 1997, Chunku Ram in 2000, Budhi Ram in 2003 and Dev Raj in 2007. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the year 2004. He further prayed for reinstatement in service *w.e.f.* in the year 2004 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1994 to 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-1994 having completed 10 years of service and per the policy of H.P. Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1994 who worked upto 2004 intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2004 he would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof

did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18, Rule 4 CPC, copy of demand notice Ex. PW1/B, copy of seniority list Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays of workers Ex. RW1/C and closed the evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 6-3-2018 for determination:—

- (1) Whether termination of the services of petitioner by the respondent during Sept., 2004 is/was improper and unjustified as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*
- (4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR.*

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:
- | | |
|-------------|---|
| Issue No. 1 | : Yes |
| Issue No. 2 | : Discussed |
| Issue No. 3 | : No |
| Issue No. 4 | : Discussed |
| Relief. | : Petition is partly allowed awarding lump sum compensation of Rs.1,00,000/- per operative part of award. |

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim

of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangti Sub Division, Chamba District and remained engaged from 1994 to 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangti Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangti Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that petitioner had abandoned the job and thus plea of abandonment merits rejection.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 79 days in the year 1994, 125.5 days in 1995, 100 days in 1996, 108 days in 1999, 126 days in 2000, 57 days in 2001, 85 days in 2002, 130 days in 2003 and 118 days in 2004 and thus in his total service from 1994 to 2004 in 09 years as he had worked for 928 days. Be it noticed that petitioner had not worked for more than 160 days in preceding 12 calendar months prior to termination and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to illegal termination. It is also evident from mandays chart Ex. RW1/B that in the year 2004, the petitioner had merely worked for 118 days and thus immediately in preceding 12 calendar months from the month of termination petitioner had factually not rendered service of 160 days continuous service of one year envisaged under Section 25-B of Act and thus it was not at all required for respondent to have issued a notice under Section 25-F of Act. Accordingly, respondent is held to have not violated provisions of Section 25-F of the Act.

15. Ld. counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. PW1/B the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/B also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after 2004 even at the time when junior persons were re-engaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the junior workers mentioned in para no.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1994 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as reflected in Ex. RW1/C. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. RW1/C were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in 2004, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Counsel of petitioner, Ld. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied from admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same**'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:—

"12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the

jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. Vs. Telecom District Manager, Karnataka[4] it was held by this Court as follows-

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. Vs. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh Vs. The Sirhind Co-operative Marketing-Cum-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:-

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court).

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (H.P.) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. Counsel for petitioner, Ld. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:—

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of Section 25-F of the I.D. Act-Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. her services terminated on 18-2-1986. Industrial

dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellants-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947-Section 25-F-Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstance which the Labour Court must keep in view before granting relief**".

21. Repudiating the arguments by Ld. D.A. for the State, Ld. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed or that employees has superannuated or going to retire shortly and no period is left to his credit or where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation**. Ld. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No. 5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652**. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh Vs. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In **2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied

relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25 -G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 09 years and actually worked for 928 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **seven years i.e.** demand notice was given in the year 2011. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Ld. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013**. Ld. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR**

2016 SC 2984 titled as **Prabhakar Vs. Joint Director Sericulture Department and another**. I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016) supra**, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs.1,00,000/- (Rupees one lakh only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3:

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief:

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,00,000/- (Rupees one lakh only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of December, 2018.

Sd/-
(K.K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 88/2016
Date of Institution : 20-2-2016
Date of Decision : 17-12-2018

Shri Kishan Kumar s/o Shri Bansil Lal, r/o V.P.O. Luj Mangalwas, Tehsil Pangi,
District Chamba, H.P. ..Petitioner.

Versus

The Executive Engineer, IPH/HPPWD, Division Killar, Tehsil Pangi, District Chamba,
H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajeev Dharmani, Adv. For the Respondent
: Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the industrial dispute raised by the worker Shri Kishan Kumar s/o Shri Bansil Lal, r/o V.P.O. Luj Mangalwas, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division H.P.P.W.D./I.&P.H. Killar (Pangi), District Chamba, H.P. *vide* demand notice dated 23-12-2011 regarding his alleged illegal termination of services during September, 2004 suffers from delay and laches? If not, whether termination of services of Shri Kishan Kumar s/o Shri Bansil Lal, r/o V.P.O. Luj Mangalwas, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division H.P.P.W.D./I.&P.H. Killar (Pangi), District Chamba, H.P. during September, 2004, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been initially engaged as daily wage beldar on muster roll basis in the year 1990 who continuously worked till 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as per the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as ‘continuous services’ for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner

remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing stipulating therein reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is also alleged that respondent had not followed the provisions of Section 25-F of the Act while disengaging petitioner from service. It is stated that petitioner is very poor who has no source of income besides after termination of the services of petitioner, petitioner had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner had been terminated, respondent/department had re-engaged number of new workman from time to time and while doing so, respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Suraj Ram who appointed in 1997, Chunku Ram in 2000, Budhi Ram in 2003 and Dev Raj in 2007. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from year 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and thus petitioner prays for setting aside oral order of termination/retrenchment of respondent in the year 2004. He further prayed for reinstatement in service *w.e.f.* year 2004 alongwith back wages, seniority including continuity in service as petitioner as he had remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks deliberately given time and again during entire service of petitioner between 1990 to 2004 be counted 160 days continuous service and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1991 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. The allegations of fictional breaks given by respondent to the petitioner have been specifically denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal, Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2004 he would have definitely raised industrial dispute immediately and that after thirteen years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing

any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of demand notice Ex. PW1/B, copy of seniority list Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1, tendered/proved mandays chart of petitioner Ex. RW1/B, Ex. RW1/C copy of mandays chart of co-workers, and closed evidence.

7. I have heard the ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 19-12-2016 for determination:—

- (1) Whether the industrial dispute raised by petitioner *vide* demand notice dated 23-12-2011 *qua* his termination of service during October, 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ..*OPP*.
- (2) Whether termination of the services of the petitioner by the respondent during September, 2004 is/was illegal and unjustified as alleged? ..*OPP*.
- (3) If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (5) Whether the claim petition is not maintainable in the present form as alleged ..*OPR*.

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	: Discussed
Issue No. 2	: Yes
Issue No. 3	: Discussed
Issue No. 4	: No
Relief.	: Claim petition is partly allowed awarding lump sum compensation of Rs. 2,00,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 to 3:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1991 to September, 2004 whereas the claimant/petitioner alleges that he had worked from 1990 to October, 2004. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged from 1991 to September, 2004 and not from 1990 to October, 2004. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangti Sub-Division Chamba District and remained engaged from 1991 to September, 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in September, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that petitioner had abandoned the job and thus plea of abandonment merits rejection.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 73 days in the year 1991, 60 days in 1992, 22 days in 1993, 89 days in 1994, 172 days in 1995, 127 days in 1996, 166 days in 1997, 17 days in 1998, 29 days in 1999, 150 days in 2000, 107 days in 2001, 126 days in 2002, 127 days in 2003 and 96 days in 2004 and thus in his total service from 1991 to 2004 in 14 years as he had worked for 1361 days. Be it noticed that petitioner had not worked for more than 160 days in preceding 12 months prior to termination and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to illegal termination. It is also evident from mandays chart Ex. RW1/B that in the year 2004, the petitioner had worked for 96 days and thus immediately in preceding 12 calendar months from the month of termination petitioner had factually not rendered service of 160 days for continuous service of one year envisaged under Section 25-B of Act and thus it was not required for respondent to have issued a notice under Section 25-F of the Act. Accordingly, respondent is held to have not violated provisions of Section 25-F of the Act.

15. Ld. counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004 even at the time when junior persons were re-engaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1991 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25 -H of the Act. Ld. counsel for petitioner has placed reliance upon

judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as reflected in Ex. RW1/C. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. RW1/C were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Ld. counsel for petitioner has contended that after petitioner's termination in September, 2004, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. counsel of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same**'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported

in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

13. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows-

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court). In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against his and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the

delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh v. The Sirhind Co-operative Marketing-cum-Processing Service Society Limited & Anr. [5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:-

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court).

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ**

903 Hon'ble High Court of H.P. (Bhatag Ram's case) in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (H.P.) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:—

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service- Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of Section 25-F of the I.D. Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F-Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

21. Repudiating the arguments by ld. Dy. D.A. for the State, ld. counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to his credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by ld. counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that

except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No.5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121, Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652**. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC *supra***, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In **2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25 -G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman**

in the facts and circumstances is not the appropriate relief and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 14 years and actually worked for 1361 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004 who worked as non-skilled worker and had raised industrial dispute by issuance of demand notice after about **seven years** i.e. demand notice was given on 23-12-2011. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by ld. counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013** as referred to above. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment **(2016) supra**, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the above-said reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs. 2,00,000/- (Rupees two lakh only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months and from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1 to 3 are answered accordingly.

Issue No. 4:

24. On the plea of non-maintainability of the claim petition under section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief:

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 2,00,000/- (Rupees two lakh only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of December, 2018.

Sd/-
(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No.	: 597/2015
Date of Institution	: 19-12-2015
Date of Decision	: 17-12-2018

Smt. Maheshi Devi w/o Shri Hira Singh, r/o Village Chachuras, P.O. Kothi, Tehsil Pangi, District Chamba, H.P.	..Petitioner.
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Versus

The Executive Engineer, Killar, I.&P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P.	..Respondent.
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Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. O.P. Bhardwaj, Adv.
For the Respondent	: Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Smt. Maheshi Devi w/o Shri Hira Singh, r/o Village Chachuras, P.O. Kothi, Tehsil Pangi, District Chamba, H.P.

before the Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. *vide* demand notice dated 06-10-2011 regarding her alleged illegal termination of service during September, 2004 suffers from delay and laches? If not, Whether termination of the Smt. Maheshi Devi w/o Shri Hira Singh, r/o Village Chachuras, P.O. Kothi, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. during September, 2004 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been initially engaged as daily wage beldar on muster roll basis in the year 1995 who continuously worked till October, 2005 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, she had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had re-engaged number of new workman from time to time and respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Sher Singh in 1996, Gurdev in 1994, Man Dei in 1994, Balwant in 1996, Dila Ram in 1996, Ram Dei in 2003, Dev Raj in 2007, Bameshwar Dutt in 2011 and Raj Kumar in 2011. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of October, 2005 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 2005. She further prayed for reinstatement in service *w.e.f.* month of October, 2005 alongwith back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of

intermittent/fictional breaks given time and again during entire service of petitioner between 1995 to October, 2005 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2003 having completed 10 years of service and per the policy of H.P. Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1995 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para no. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal, Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2004 she would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of demand notice dated Ex. PW1/B, copy of seniority list Ex. PW1/C, and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed evidence.

7. I have heard the Id. counsel of petitioner and Id. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 18-8-2017 for determination:—

- (1) Whether the industrial dispute raised by petitioner *vide* demand notice dated 6-10-2011 *qua* her termination of service during Sept. 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ..OPP.

- (2) Whether termination of the services of petitioner by the respondent during Sept., 2004 is/was illegal and unjustified as alleged? ..*OPP.*
- (3) If issue no. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (4) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:-

Issue No.1	: Discussed
Issue No.2	: Yes
Issue No.3	: Discussed
Issue No.4	: No
Relief	: Petition is partly allowed awarding compensation of Rs. 1,10,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1995 till September, 2004 whereas the claimant/petitioner alleges that he had worked from 1995 to October, 2005. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged till September, 2004 and not upto October, 2005. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1995 to September, 2004. She has also stated on oath that no notice under section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice

period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in September, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 109 days in the year 1995, 88 days in 1996, 59 days in 1997, 28 days in 1998, 96 days in 1999, 130 days in 2000, 81 days in 2001, 123 days in 2002, 114 days in 2003 and 108 days in 2004 and thus a total of her service in 1995 to 2004 in 10 years she had worked for 936 days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 108 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004 even at the time when junior persons were re-engaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1998 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as reflected in Ex. RW1/C. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. RW1/C were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Ld. counsel for petitioner has contended that after petitioner's termination in September, 2004, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. counsel of petitioner, ld. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same**'. Applying the ratio

of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Id. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Id. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows-

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the

appellants. We cannot agree..... In *Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)* 1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court). In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of *Ajaib Singh v. The Sirhind Co-Operative Marketing-cum-Processing Service Society Limited & Anr.* [5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:-

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court).

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Id. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (H.P.) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. counsel for petitioner, Id. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub- Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:—

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service- Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of Section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F-Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

21. Repudiating the arguments by Id. D.A. for the State, Id. counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as

Tapash Kumar Paul vs. BSNL & another reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to her credit **or** where workman has been rendered incapacitated to discharge duties cannot be reinstated and/or fourthly when she has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No. 5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652**. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC *supra***, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In **2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25 -G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work but in the case in hand petitioner had abandoned the job who never reported for duty. As such,

when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 10 years and actually worked for 936 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **seven years i.e.** demand notice was given on 06-10-2011. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by ld. counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013**.

23. In view of foregoing discussion, a lump-sum compensation of Rs.1,10,000/- (Rupees one lakh ten thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1 to 3 are answered accordingly.

Issue No. 3:

24. On the plea of non-maintainability of the claim petition under section 10 of the Industrial Disputes Act, ld. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being

not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief:

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,10,000/- (Rupees one lakh ten thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of December, 2018.

Sd/-
(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHRISHARMA, PRESIDING JUDGE LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No.	: 52/201
Date of Institution	: 24-01-2017
Date of Decision	: 17-12-2018

Shri Haria Ram s/o Shri Karam, r/o Village & Post Office Mindhal, Tehsil Pangi,
District Chamba, H.P. *..Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba,
H.P. *..Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. O.P. Bhardwaj, Adv.
For the Respondent	: Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Sh. Haria Ram s/o Sh. Karam, r/o Village Mindhal, Tehsil Pangi, Distt. Chamba, H.P. during July, 2003 by the Executive Engineer, HPPWD Division, Pangi at Killar, Tehsil Pangi, Distt. Chamba, H.P. who had worked as beldar on daily wages basis during the years 1998 and thereafter during the year 2002 to 2003 only for 250 days and has raised his industrial dispute *vide* demand notice dated 21-5-2015 after more than 11 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as mentioned above and delay of more than 11 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been initially engaged as daily wage beldar on muster roll basis in the year 1994 who continuously worked till October, 2005 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as ‘continuous services’ for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month’s notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, he had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had re-engaged number of new workman from time to time and respondent had not followed the principle of ‘Last come, First go’ envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Sher Singh in 1996, Gurdev in 1994, Man Dei in 1994, Balwant in 1996, Dila Ram in 1996, Ram Dei in 2003, Dev Raj in 2007, Bameshwar Dutt in 2011 and Raj Kumar in 2011. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of October, 2005 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision

of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retranchment by the respondent in the month of October, 2005. He further prayed for reinstatement in service *w.e.f.* month of October, 2005 alongwith back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1994 to October, 2005 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2004 having completed 10 years of service and per the policy of H.P. Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1998 who worked upto 2003 intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal, Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2003 he would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays of workers Ex. RW1/C and closed evidence.

7. I have heard the ld. counsel of petitioner and ld. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 6-3-2018 for determination:

- (1) Whether termination of the services of petitioner by the respondent during July, 2003 is/was illegal and unjustified as alleged? ..*OPP*.
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (3) Whether the claim petition is not maintainable in the present form? .. *OPR*.
- (4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:

Issue No. 1	: Yes
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: Discussed
Relief	: Petition is partly allowed awarding lump-sum compensation of Rs. 40,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1998 till July, 2003 whereas the claimant/petitioner alleges that he had worked from 1994 to October, 2005. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged from May, 1998 till July, 2003 and not from 1994 upto October, 2005. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangri Sub Division Chamba District and remained engaged from 1998 to July, 2003. He has also stated

on oath that no notice under section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in July, 2003 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after July, 2003. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that petitioner had abandoned the job and thus plea of abandonment merits rejection.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 59 days in the year 1998, 58 days in 2001, 94 days in 2002 and 39 days in 2003 and thus in his total service from 1998 to July, 2003 in 04 years as he had worked for 250 days. Be it noticed that petitioner had not worked for more than 160 days in preceding 12 calendar months prior to termination and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to illegal termination. It is also evident from mandays chart Ex. RW1/B that in the year 2003, the petitioner had merely worked for 39 days and thus immediately in preceding 12 calendar months from the month of termination petitioner had factually not rendered service of 160 days continuous service of one year envisaged under Section 25-B of Act and thus it was not at all required for respondent to have issued a notice under Section 25-F of Act. Accordingly, respondent is held to have not violated provisions of Section 25-F of the Act.

15. Ld. counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after July, 2003 even at the time when junior persons were re-engaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1998 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25 -H of the Act. Ld. counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as reflected in Ex. RW1/C. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. RW1/C were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Ld. counsel for petitioner has contended that after petitioner's termination in July, 2003, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. counsel of petitioner, ld. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied from admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same**'. Applying the ratio

of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Id. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Id. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:—

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows-

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of

India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court). In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against his and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of *Ajaib Singh v. The Sirhind Co-operative Marketing-cum-Processing Service Society Limited & Anr.*[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court).

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Id. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2003 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (H.P.) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. counsel for petitioner, Id. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub- Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service- Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of Section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable.
[Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial**

disputes definitely an important circumstances which the Labour Court must keep in view before granting relief”.

21. Repudiating the arguments by Id. D.A. for the State, Id. counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to his credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstate ment should be followed to be substituted by award of compensation.** Id. counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Id. counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No.5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Id. counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652**. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Id. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC *supra***, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by Id. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In **2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the

facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 04 years and actually worked for 250 days as per mandays chart on record and that the services of petitioner were disengaged in July, 2003 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eleven years i.e.** demand notice was given on 21-5-2015. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Id. counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub- Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013**. Id. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016) supra**, claimant/petitioner was found to be an educated person who was working as

Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs.40,000/- (Rupees forty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3:

24. On the plea of non-maintainability of the claim petition under section 10 of the Industrial Disputes Act, Id. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief:

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 40,000/- (Rupees forty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of December, 2018.

Sd/-
(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No.	: 351/2016
Date of Institution	: 26-5-2016
Date of Decision	: 17-12-2018

Smt. Anita Kumari w/o Shri Hari Singh, r/o Village Jhalwas, P.O. Karyas, Tehsil Pangi,
District Chamba, H.P. *..Petitioner.*

Versus

The Executive Engineer, Killar Division, H.P.P.W.D., Killar Tehsil Pangi, District Chamba, H.P. ..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Smt. Anita Kumari w/o Sh. Hari Singh, Village Jhalwas, P.O. Karyas, Tehsil Pangi, Distt. Chamba, H.P. during 2003 by the Executive Engineer, HPPWD Division, Killar (Pangi), Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 131 days during the year 2003 and has raised her industrial dispute *vide* demand notice dated 18-1-2013 after more than 9 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period mentioned as above and delay of more than 9 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that she had been initially engaged as daily waged beldar on muster roll basis in the year 1998 who continuously worked till September, 2003 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of month of September, 2003 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retranchment of the petitioner and while retranching the services of petitioner, even principle of ‘Last come First go’ had not been followed by the department/ respondent. The petitioner has named 23 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the end of month of September, 2003 when the services of petitioner were terminated by way of oral order, she was not served with one month notice of

retrenchment and at the same time, one month's wages in lieu of notice period had also not been paid to her and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of September, 2003 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of September, 2003. She further prayed for reinstatement in service *w.e.f.* month of September, 2003 alongwith back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1998 to September, 2003 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2006 having completed 08 years of service and per the policy of H.P. Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 2003 who had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial Nos. 1 to 19, 21 & 23 in para No. 4 of the claim petition were appointed as per order of Labour Court and at serial Nos. 20 & 22 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No.4 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal, Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2003, she would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed evidence.

7. I have heard the Id. Authorized Representative of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8 From the contentions raised, following issues were framed on 12-6-2018 for determination which are as under:—

- (1) Whether termination of service of petitioner by the respondent during year 2003 is/was legal and justified as alleged? ..*OPP*.
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.
- (4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:

Issue No. 1	: No
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: Discussed
Relief	: Petition is partly allowed awarding lump-sum compensation of Rs. 30,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work

intermittently as per her own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from May, 2003 till September, 2003 whereas the claimant/petitioner alleges that he had worked from 1998 to September, 2003. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged from May, 2003 and not from 1998. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangti Sub Division Chamba District and remained engaged from May, 2003 to September, 2003. She has also stated on oath that no notice under section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in September, 2003 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2003. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermittent breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangti Tehsil area and also for applicability of Section 25-B of the Act. As such, in

absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 10 days, 30 days, 31 days, 31 days & 29 days from May, 2003 to September, 2003 and thus a total of her service in May, 2003 to September, 2003 in 01 year she had worked for 131 days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2003 the petitioner had merely worked for 131 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years for more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2003 even at the time when junior persons were re-engaged. That being so, the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No.3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 2003 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25 -G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as reflected in Ex. RW1/C. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. RW1/C were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years

which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Id. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2003 and the industrial dispute was raised after 09 years of retrenchment. Repudiating the argument by Id. counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (H.P.) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

18. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. Authorized Representative for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:—

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service- Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of Section 25-F of the I.D. Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947- Section 25-F-Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

I have gone through the rival contention of the Id. Authorized Representative as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** observing that before exercising its judicial discretion, the

Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 01 year and actually worked for 131 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2003 who worked as non-skilled worker and had raised industrial dispute by issuance of demand notice after about **nine years** i.e. demand notice was given on 18-1-2013. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 35 years who has sufficient spell of life to work and earn her livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Id. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches as discussed in foregoing paras.

19. In view of foregoing discussion, a lump-sum compensation of Rs. 30,000/- (Rupees thirty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3:

20. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief:

21. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.30,000/- (Rupees thirty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of December, 2018.

Sd/-
(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No.	: 241/2016
Date of Institution	: 21-4-2016
Date of Decision	: 17-12-2018

Smt. Filmi Devi w/o Shri Tek Chand, r/o Village and Post Office Purthi, Tehsil Pangi, District Chamba, H.P. *..Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Killar Tehsil Pangi, District Chamba, H.P. *..Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. I.S. Jaryal, AR
For the Respondent	: Sh. Sanjeev Singh Rana, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Smt. Filmi Devi w/o Shri Tek Chand, r/o Village and Post Office Purthi, Tehsil Pangi, District Chamba, H.P. during June, 2003 by the Executive Engineer, H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P., who had worked as beldar on daily wages for 21 days during year, 2001, 63 days during year, 2002 and 16 days during year, 2003 respectively and has raised his industrial dispute after more than 8 years *vide* demand notice dated 07-05-2012, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 21 days during year, 2001, 63 days during year, 2002 and 16 days during year, 2003 respectively and delay of more than 8 years in raising the industrial dispute, what amount of back

wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that she had been initially engaged as daily waged beldar on muster roll basis in the year 2001 who continuously worked till June, 2003 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of month of June, 2003 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and mala fide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retranchment of the petitioner and while retranching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 8 persons who were junior to petitioner and joined service from 2001 to 2007. In the end of month of June, 2003 when the services of petitioner were terminated by way of oral order, she was not served with one month notice of retranchment and at the same time, one month's wages in lieu of notice period had also not been paid to her and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of June, 2003 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retranchment by the respondent in the month of June, 2003. She further prayed for reinstatement in service *w.e.f.* month of June, 2003 alongwith back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 2001 to June, 2003 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2009 having completed 08 years of service and per the policy of H.P. Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 2001 who remained engaged till 2003 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial Nos. 1 to 24, 26 & 28 in para No. 4 of the claim petition were appointed as per order of Labour Court. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No. 4 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal, Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2003, she would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/C mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed evidence.

7. I have heard the Id. Authorized Representative of petitioner and Id. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 04-10-2017 for determination which are as under:—

- (1) Whether termination of services of the petitioner by the respondent during June, 2003 is/was improper and unjustified as alleged? ..OPP.
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
- (3) Whether the claim petition is not maintainable in the present form? ..OPR.

- (4) Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged.? ..OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:

Issue No. 1	: Yes
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: Discussed
Relief	: Petition is partly allowed awarding lump-sum compensation of Rs. 25,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 2001 to June, 2003. She has also stated on oath that no notice under section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in June, 2003 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising

demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after June, 2003. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermittent breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 21 days in the year 2001, 63 days in 2002 and 16 days in 2003 and thus a total of her service in 2001 to 2003 in 03 years she had worked for 100 days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2003 the petitioner had merely worked for 16 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 2001 to 2007 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B & Ex. PW1/C are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 2001 or thereafter. All of these co-workers shown in Ex. PW1/B & Ex. PW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years for more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after June, 2003 even at the time when junior persons were re-engaged. That being so, the respondent had

certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No. 3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 2001 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Id. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as reflected in Ex. RW1/C. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. RW1/C were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Id. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2003 and the industrial dispute was raised after 08 years of retrenchment. Repudiating the argument by Id. counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

18. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. Authorized Representative for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:—

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service- Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of Section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in

view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service- **Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief”.**

I have gone through the rival contention of the Id. Authorized Representative as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon’ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh’s** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon’ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon’ble Apex Court has held that though compensation awarded by Single Judge of the Hon’ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon’ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 03 years and actually worked for 100 days as per mandays chart on record and that the services of petitioner were disengaged in June, 2003 who worked as non-skilled worker and had raised industrial dispute by issuance of demand notice after about **eighty years i.e.** demand notice was given on 7-5-2012. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 38 years who has sufficient spell of life to work and earn her livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon’ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Id. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches as discussed in foregoing paras.

19. In view of foregoing discussion, a lump-sum compensation of Rs. 25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3:

20. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief:

21. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of December, 2018.

Sd/-
(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

